

A
COLLECTION
OF
DECISIONS
OF THE
COURT of KING's BENCH
UPON THE
POOR's LAWS,
DOWN TO THE PRESENT TIME;

In which are contained many CASES never before published; extracted from the NOTES of a very Eminent BARRISTER deceased: The whole digested in a regular Order.

By EDMUND BOTT, Esq. BARRISTER at LAW of the
INNER TEMPLE.

TO WHICH ARE PREFIXED,
EXTRACTS from the STATUTES
concerning the P O O R.

The Second EDITION, with considerable Additions.

L O N D O N :

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COMPLETION

DECISIONS

COURT OF KING BENCH

BOOKS



In which are contained the
judgments, delivered by the JUSTICES
of the said COURT OF KING BENCH
from the year 1750 to 1760.

By Henry D. G. Esq. Barrister at Law.
1761.

EXTRACTS FROM THE

THE COURT OF KING BENCH

LONDON

Printed by W. Baskett, at the Sign of the Crown, in St. Pauls Church-yard.

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prefixed to the first Edition.

IT may not be improper to give some account of the reasons for undertaking the following compilation, and the manner in which it has been executed. The number of collections already published might indeed render any publication of this nature useless; but the want of method and accuracy, evident, in a greater or less degree, in all of them, may preclude any further apology for making this collection. Add to this, that the number of years elapsed since the publication of the latest of them, causes an unvoidable insufficiency in them. A great number of very nice and important questions upon the poor laws have been lately determined by the court of *King's Bench*. Of those Mr. *Burrow* has favoured the world with an excellent Report; but from the size of that collection, it is rendered too expensive for the purchase of parish officers, and inconvenient for gentlemen who attend at the sessions. Doctor *Burn* deserves the highest respect for his *Justice of Peace*; but as only the last edition of that excellent work, is enriched by extracts from Mr. *Burrow's Report*, all the former editions fall short of that perfection which their ingenious Author would now have been able to bestow upon

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Pl. 8. insert in margin, see Pl. 24. Pl. 12. after the words, the other Justice, insert, declared that—Pl. 21. insert in margin, see Pl. 63. Page 47. insert in margin, see Pl. 692. Page 69. insert in margin, see Pl. 690. Pl. 112. insert in margin, see Pl. 122. Pl. 122. insert in margin, see Pl. 126. Page 93. insert in margin, see Pl. 181. Pl. 202. insert in margin, see Pl. 207. insert in margin, see Pl. 212. Pl. 212. insert in margin, see Pl. 212. the insertion, see Pl. 271. insert in margin, see Pl. 271. insert in margin, see Pl. 280. Page 396. Pl. 699. after the words, by party, insert



ERRATA.

Pl. 8. insert in margin, *See Pl. 24.* *Pl. 15.*—after the words, *the other Justices*, insert, *declared that*—*Pl. 51.* insert in margin, *See Pl. 63.*—Page 47. insert in margin, *See Pl. 692.*—Page 69. insert in margin, *See Pl. 690.*—*Pl. 115.* insert in margin, *See Pl. 125.*—*Pl. 172.* insert in margin, *See Pl. 156.*—Page 93. insert in margin, *See Pl. 181.*—*Pl. 202.* insert in margin, *See Pl. 207.*—*Pl. 211.* insert in margin, *See Pl. 215.*—*Pl. 276.* after the words *sessions have stated*, insert, *that the indentures were not produced and*—*Pl. 271.* insert in margin, *See Pl. 699.*—*Pl. 321.* insert in margin, *See Pl. 701.*—*Pl. 349.* insert in margin, *See Pl. 289.*—Page 396. *Pl. 699.* after the words, *by parcel*, insert *I am not.*

Extracts of Statutes in force
concerning the Provision
for the Poor.

Anno 5 Eliz. Cap. 4.

An Act containing divers Orders of Artificers, Labourers, Servants of Husbandry, and Apprentices.

ALTHOUGH there remain and stand in force presently, a great number of acts and statutes concerning the retaining, departing, wages, and orders of apprentices, servants and labourers, as well in husbandry, as in divers other arts, mysteries, and occupations; yet partly for the imperfection and contrariety that is found and doth appear in sundry of the said laws, and for the variety and number of them, and chiefly for that the wages and allowances limited and rated in many of the said statutes, are in divers places too small, and not answerable to this time, respecting the advancement of prices of all things belonging to the said servants and labourers, the said laws cannot conveniently without the great grief and burden of the poor labourer, and hired man, be put in good and due execution: And as the said several acts and statutes were at the time of the making of them, thought to be very good and beneficial for the commonwealth of this realm (as divers of them yet are) So if the substance of as many of the said laws as are meet to be continued, shall be digested and re-

A repeal of so much of former statutes as concern the hiring, keeping, departing, working, or order of servants, labourers, &c.

And a declaration who shall be compellable to serve in handicrafts, and who in husbandry, and their several duties, &c.

duced into one sole law and statute, and in the same and uniform order prescribed and limited concerning the wages and other orders for apprentices, servants and labourers, there is good hope that it will come to pass, that the same law (being duly executed) should banish idleness, advance husbandry, and yield unto the hired person both in the time of scarcity, and in the time of plenty, a convenient proportion of wages.

§ II. Be it therefore enacted by the authority of this present parliament, That as much of all the statutes heretofore made, and every branch of them, as touch or concern the hiring, keeping, departing, working, wages, or order of servants, workmen, artificers, apprentices and labourers, or any of them, and the penalties and forfeitures concerning the same, shall be from and after the last day of *September* next ensuing, repealed and utterly void and of none effect, and that all the said statutes, and every branch thereof, or any matter contained in them, and not repealed by this statute, shall remain and be in full force and effect; any thing in this statute to the contrary notwithstanding.

No person shall put away his servant, nor any servant shall depart from his Master, before the end of his time.

§ V. And be it further enacted, That no person which shall retain any servant, shall put away his or her said servant, and that no person retained according to this statute, shall depart from his Master, Mistress or Dame, before the end of his or her term, upon the pain hereafter mentioned, unless it be for some reasonable and sufficient cause or matter, or be allowed before two Justices of Peace, or one at the least, within the said county, or before the Mayor or other chief officer of the city, borough, or town-corporate wherein the said Master, Mistress or Dame inhabiteth, to whom any of the parties grieved shall complain; which said Justices or Justice, Mayor or chief officer, shall have and take upon them or him, the hearing and ordering of the matter betwixt the said Master or Mistress, or Dame and servant, according to the equity of the cause.

The cause of the servants putting away, or departing, to be determined by a Justice of Peace, Mayor, Bailiff, &c.

§ VI. And that no such Master, Mistress or Dame, shall put away any such servant at the end of his term, or that any such servant shall depart from his said Master, Mistress or Dame at the end of his term, without one quarter's warning given before the end of his said term, either by the said Master, Mistress or Dame, or servant, the one to the other, upon the pain hereafter ensuing.

§ VIII. And be it further enacted by the authority of this present parliament, That if any person after he hath retained any servant, shall put away the same servant before the end of his term, unless it be for some reasonable and sufficient cause, to be allowed as is aforesaid; or if any such Master, Mistress or Dame, shall put away any such servant at the end of his term, without one quarter's warning given before the said end, as is above remembered, that then every such Master, Mistress or Dame so offending, unless he or they be able to prove by two sufficient witnesses, such reasonable and sufficient cause of putting away of their servant or servants, during their term, or a quarter's warning given afore the end of the said term, as is aforesaid, before the Justices of *Oyer and Terminer*, Justices of the assize, Justice of Peace in the quarter sessions, or before the Mayor or other head-officer of any city, borough or town-corporate, and two Aldermen, or two other discreet burghesses of the same city, borough, or town-corporate, if there be no Aldermen, or before the Lord President and council established in the marches of *Wales*, or before the Lord President and council for the time being established in the North parts, shall forfeit the sum of 40 s.

The forfeiture for putting away his servant within his term, or at the end of his term, without warning.

§ XXV. And for the better advancement of husbandry and tillage, and to the intent that such as are fit to be made apprentices to husbandry, may be bounden thereunto, Be it enacted by the authority of this present parliament, That every person being an householder, and having and using half a plough land at the least in tillage, may have and receive to an apprentice any person above the age of ten years, and under the age of eighteen years, to serve in husbandry, until his age of twenty-one years at the least, or until the age of twenty-four, as the parties can agree, and the said retainor and taking of an apprentice, to be made and done by indenture.

Husbandmen may take apprentices.

§ XXVI. And be it further enacted, That every person being an householder, and twenty-four years old at the least, dwelling or inhabiting, or which shall dwell and inhabit in any city or town-corporate, and using and exercising any art, mystery, or manual occupation there, shall and may after the feast of *St. John Baptist* next coming, during the time that he shall so dwell or inhabit in any such city or town-corporate, and use and exercise any such art or mystery, or manual occupation, have and retain the son of any freeman, not occupying husbandry, nor being a labourer, and inhabiting in the

Every householder dwelling in any town corporate may take an apprentice for seven years.

same or in any other city or town that now is, or hereafter shall be and continue incorporate, to serve and be bound as an apprentice, after the custom and order of the city of *London*, for seven years at the least, so as the term and years of such apprentice do not expire or determine afore such apprentice shall be of the age of 24 years at the least.

Whom they may have for their apprentices, which dwell in market towns not corporate.

§ XXVIII. And be it further enacted, That from and after the said feast of *St John the Baptist* next, it shall be lawful to every person being an householder, and four and twenty years old at the least, and not occupying husbandry, nor being a labourer, dwelling or inhabiting, or that shall hereafter dwell or inhabit in any town not being incorporate, that now is, or hereafter shall be a market town, so long as the same shall be weekly used, and kept as a market town, and using or exercising any art, mystery, or manual occupation, during the time of his abode there, and so using and exercising such art, mystery, or manual occupation as aforesaid, to have in like manner to apprentice or apprentices, the child or children of any other artificer, or artificers, not occupying husbandry, nor being a labourer, which now do, or hereafter shall inhabit or dwell in the same, or any other such market town within the same shire, to serve as an apprentice or apprentices as is aforesaid, to any such art, mystery, or manual occupation, as hath been usually exercised in any such market town, where such apprentice shall be bound in manner and form aforesaid.

These artificers may take apprentices whose parents may depend no land.

§ XXX. And be it further enacted, That from and after the said feast, it shall be lawful to any person using or exercising the art or occupation of a smith, wheelwright, plough-wright, mill-wright, carpenter, rough-mason, plaisterer, sawyer, lime-burner, brick-maker, bricklayer, tyler, flater, helier, tyle-maker, linen-weaver, turner, cooper, miller, earthen-potters, wool-len-weaver, weaving huswives or household cloth only, and none other cloth; fuller, otherwise called tucker or walker, burner of oare and wood-ashes, thatcher, or shingler, wheresoever he or they shall dwell or inhabit, to have or receive the son of any person as apprentice in manner and form aforesaid, to be taught and instructed in these occupations only, and in none other, albeit the father or mother of any such apprentice have not any lands, tenements, or hereditaments.

§ XXXI.

§ XXXI. And be it further enacted by the authority of the said Parliament, That after the first day of *May* next coming, it shall not be lawful to any person or persons, other than such as now do lawfully use or exercise any art, mystery, or manual occupation, to set up, occupy, use or exercise any craft, mystery, or occupation now used or occupied within the realm of *England* or *Wales*, except he shall have been brought up therein seven years at the least as an apprentice, in manner and form aforesaid; nor to set any person on work in such mystery, art or occupation, being not a workman at this day, except he shall have been apprentice, as is aforesaid; or else having served as an apprentice, as is aforesaid, shall or will become a journeyman, or hired by the year, upon pain that every person willingly offending or doing the contrary, shall forfeit and lose for every default, forty shillings for every month.

§ XXXV. And be it further enacted, That if any person shall be required by any householder, having and using half a plough-land at the least in tillage, to be an apprentice, and to serve in husbandry, or in any other kind of art, mystery or science before expressed, and shall refuse so to do, That then upon complaint of such housekeeper made to one Justice of the Peace of the county where the said refusal is or shall be made, or of such householder inhabiting in any city, town-corporate, or market town, to the Mayor, Bailiffs, or head-officer of the said city, town-corporate, or market town, if any such refusal shall there be, they shall have full power and authority by virtue hereof to send for the same person so refusing: And if the Justice, or the said Mayor or head-officer shall think the said person meet and convenient to serve as an apprentice in that art, labour, science or mystery wherein he shall be so then required to serve: That then the said Justice, or the said Mayor or head-officer, shall have power and authority, by virtue hereof, if the said person refuse to be bound as an apprentice, to commit him unto ward, there to remain until he be contented, and will be bounden to serve as an apprentice should serve, according to the true intent and meaning of this present act. And if any such Master shall misuse or evil intreat his apprentice, or that the said apprentice shall have any just cause to complain, or the apprentice do not his duty to his Master, then the said Master or apprentice being grieved, and having cause to complain, shall repair unto one Justice of Peace within

None may use any manual occupation, except he hath been apprentices to the same.

Stat. 31 Eliz. 5.
2 Bulstr. 186.
3 Bulstr. 179.

The punishment of him which refuseth to be an apprentice.

The remedy for the apprentice which is misused by his Master, and for the Master when the apprentice doth not his duty.

Where an apprentice may be discharged of his apprenticeship.

within the said county, or to the Mayor or other head-officer of the said city, town-corporate, market town, or other place where the said Master dwelleth, who shall by his wisdom and discretion take such order and direction between the said Master and his apprentice, as the equity of the cause shall require; and if for want of good conformity in the Master, the said Justice of Peace, or the said Mayor or head-officer cannot compound and agree the matter between him and his apprentice, then the said Justice, or the said Mayor or other head-officer shall take bond of the said Master, to appear at the next sessions then to be holden in the said county, or within the said city, town-corporate, or market town, to be before the Justices of the said county, or the Mayor or head-officer of the said town-corporate or market-town, if the said Master dwell within any such; and upon his appearance and hearing of the matter before the said Justices, or the said Mayor or other head-officer, if it be thought meet unto them, to discharge the said apprentice of his apprenticeship, that then the said Justices, or four of them at the least, whereof one to be of the *Quorum*; or the said Mayor or head-officer, with the consent of three other of his brethren, or men of best reputation within the said city, town-corporate or market town, shall have power by authority hereof, in writing under their hands and seals, to pronounce and declare, That they have discharged the said apprentice of his apprenticeship, and the cause thereof, and the said writing so being made and inrolled by the Clerk of the Peace, or Town-clerk, amongst the records that he keepeth, shall be a sufficient discharge for the said apprentice against his Master, his executors and administrators; the indenture of the said apprenticeship, or any law or custom to the contrary notwithstanding. And if the default shall be found to be in the apprentice, then the said Justices, or the said Mayor or other head-officer, with the assistance aforesaid, shall cause such due correction and punishment to be ministred unto him, as by their wisdom and discretions shall be thought meet.

None shall be bound to be apprentices, but those which be under 21 years of age.

§ XXXVI. Provided always, and be it enacted by authority of this present parliament, That no person shall by force or colour of this statute, be bounden to enter into any apprenticeship, other than such as be under the age of 21 years.

§ XLI.

§ XLI. And be it also further enacted, That all indentures, covenants, promises and bargains of or for the having, taking or keeping of any apprentice, otherwise hereafter to be made or taken, than is by this statute limited, ordained and appointed, shall be clearly void in the law, to all intents and purposes; and that every person that shall from henceforth take or newly retain any apprentice contrary to the tenor and true meaning of this act, shall forfeit and lose for every apprentice so by him taken, the sum of ten pounds.

The forfeiture of him that taketh an apprentice otherwise than is limited by this statute,

Anno 18 Eliz. Cap. 3.

Justices of the Peace shall order the Punishment of the Mother and reputed Father of a Bastard, &c.

§ II. **C**ONCERNING bastards begotten and born out of lawful matrimony (an offence against God's law and man's law) the said bastards being now left to be kept at the charges of the parish where they be born, to the great burden of the same parish, and in defrauding of the relief of the impotent and aged true poor of the same parish, and to the evil example and encouragement of lewd life: (2) It is ordained and enacted by the authority aforesaid, That two Justices of the Peace (whereof one to be of the *Quorum*, in or next unto the limits where the parish church is, within which parish such bastard shall be born, upon examination of the cause and circumstance), shall and may, by their discretion, take order, as well for the punishment of the mother and reputed father of such bastard child, as also for the better relief of every such parish in part or in all; (3) and shall and may likewise, by like discretion, take order for the keeping of every such bastard child, by charging such Mother or reputed Father with the payment of money weekly, or other sustentation for the relief of such child, in such wise as they shall think meet and convenient: (4) And if, after the same order by them subscribed under their hands, any the said persons, viz. Mother or reputed Father, upon notice thereof, shall not for their part observe and perform

Cro. Car. 47, 350, 470.

Mod. Cases in Law, 4.

2 Bulst. 343.

148, 350, 355. A provision for the keeping of bastards.

Further provisions relating hereto, 7 Jac. 1. c. 4.

form the said order; that then every such party so making default in not performing of the said order, to be committed to ward to the common gaol, (5) there to remain without bail or mainprize, except he, she, or they shall put in sufficient surety to perform the said order, or else personally to appear at the next general sessions of the peace, to be holden in that county where such order shall be taken; (6) and also to abide such order as the said Justices of the peace, or more part of them, then and there shall take in that behalf; if they then and there shall take any; (7) and that if at the said sessions the said Justices shall take no other order, then to abide and perform the order before made, as is aforesaid. 3 Car. 1. c. 4. continued until the end of the first session of the next parliament, and farther continued by 16 Car. 1. c. 4.

Anno 43 Eliz. Cap. 2.

An Act for the Relief of the Poor.

Who shall be overseers for the poor; their office, duty, and accounts, &c. 39 Eliz. c. 3. Mod. Cases in Law 19. 341. 4 Mod. 157. Cro. Car. 92. Who shall be taxed towards the relief of the poor.

A convenient stock shall be provided to set the poor on work.

BE it enacted by the authority of this present parliament, That the churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in *Easter* week, or within one month after *Easter*, under the hand and seal of two or more Justices of the peace in the same county, whereof one to be of the *Quorum*, dwelling in or near the same parish or division where the same parish doth lie, shall be called overseers of the poor of the same parish: And they, or the greater part of them, shall take order from time to time, by and with the consent of two or more such Justices of peace, as is aforesaid, for setting to work the children of all such, whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: And also to raise weekly, or otherwise (by

(by taxation of every inhabitant, parson, vicar, and other, and of every other occupier of lands, houses, tithes, impropriate, appropriations of tithes, coal mines, or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit) a convenient stock of flax, hemp, wool, thread, iron, and other ware and stuff, to set the poor on work: And also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind and such other among them, being poor, and not able to work; and also for the putting out of such children to be apprentices, to be gathered out of the same parish, according to the ability of the same parish; and to do and execute all other things, as well for the disposing of the said stock, as otherwise, concerning the premises, as to them shall seem convenient.

§ II. Which said churchwardens and overseers so to be nominated, or such of them as shall not be let by sickness, or other just excuse, to be allowed by two such Justices of Peace, or more, as is aforesaid, shall meet together, at the least once every month, in the church of the said parish, upon the Sunday in the afternoon, after divine service, there to consider of some good course to be taken, and of some meet order to be set down in the premises; (2) and shall, within four days after the end of their year, and after other overseers nominated, as aforesaid, make and yield up to such two Justices of Peace, as is aforesaid, true and perfect accounts of all sums of money by them received, or rated and sold, and not received, and also of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their said office; (3) and such sum or sums of money as shall be in their hands, shall pay and deliver over to the said churchwardens and overseers newly nominated and appointed, as aforesaid, (4) upon pain that every one of them absenting themselves without lawful cause, as aforesaid, from such monthly meeting for the purpose aforesaid, or being negligent in their office, or in the execution of the orders aforesaid, being made by and with the assent of the said Justices of Peace, or any two of them before mentioned, to forfeit for every such default of absence or negligence, twenty shillings.

§ III. And be it also enacted, That if the said Justices of Peace do perceive, that the inhabitants of any parish

The names of such as receive collection, to be registered in a book.
3 & 4 W. & M.
c. 11. § 11.

The overseers shall meet once every month.
2 Bulst 345.
2 & c. 358.
5 Mod. 179.

The Overseers account.

The overseers forfeiture for absence or negligence.

A provision where the inhabitants of any parish are not able to relieve themselves.

poor. 2 Bulst. 351. 1 Ventr. 350. Churchwardens, &c. may make a rate to themselves, &c. 23 & 24 Car. 2. c. 12. § 18.

are not able to levy among themselves sufficient sums of money for the purposes aforesaid; that then the said two Justices shall and may tax, rate, and assess, as aforesaid, any other of other parishes, or out of any parish, within the hundred, where the said parish is, to pay such sum and sums of money to the churchwardens and overseers of the said poor parish for the said purposes, as the said Justices shall think fit, according to the intent of this law; (2) And if the said hundred shall not be thought to the said Justices able and fit to relieve the said several parishes, nor able to provide for themselves as aforesaid; then the Justices of Peace at their general quarter sessions, or the greater number of them, shall rate and assess, as aforesaid, any other of other parishes, or out of any parish within the said county, for the purposes aforesaid, as in their discretion shall seem fit.

A remedy for
the levying of the
money assessed.

§ IV. And that it shall be lawful, as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such Justices of Peace, as is aforesaid, to levy as well the said sums of money, and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offender's goods, as the sums of money or stock which shall be behind upon any account to be made as aforesaid, rendering to the parties the overplus; (2) and in defect of such distress, it shall be lawful for any such two Justices of the Peace to commit him or them to the common gaol of the county, there to remain without bail or mainprize, until payment of the said sum, arrearages, and stock: (3) And the said Justices of Peace, or any one of them, to send to the house of correction or common gaol, such as shall not employ themselves to work, being appointed thereunto, as aforesaid: (4) And also any such two Justices of Peace to commit to the said prison every one of the said churchwardens and overseers which shall refuse to account, there to remain without bail or mainprize, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands.

Imprisonment
in default of
distress.

Imprisonment
of those that
will not work.

Refusers to ac-
count impris-
oned.
17 Geo. 2.
c. 38.

Binding of chil-
dren apprentices.
1 Jac. 1. c. 25.
3 Car. 1. c. 4.
Further provi-
sions relating
thereto.

289 W. & M. 3.
c. 30. § 5.

Parish apprentices may be turned over to the sea service, by 2 & 5 Annæ, c. 6. § 6. Building of houses on the waste for the poor to inhabit,

§ V. And be it further enacted, That it shall be law-
ful for the said churchwardens and overseers, or the greater
part of them, by the assent of any two Justices of
the peace aforesaid, to bind any such children, as afore-
said, to be apprentices, where they shall see convenient,
till

till such man-child shall come to the age of four and twenty years, and such woman child to the age of one and twenty years, or the time of her marriage; the same to be as effectual to all purposes, as if such child were of full age, and by indenture of covenant bound him or herself. (2) And to the intent the necessary places of habitation may more conveniently be provided for such poor impotent people: (3) Be it enacted by the authority aforesaid, That it shall and may be lawful for the said churchwardens and overseers, or the greater part of them, by the leave of the lord or lords of the manor, whereof any waste or common within their parish is or shall be parcel, and upon agreement before with him or them made in writing, under the hands and seals of the said Lord or Lords, or otherwise according to any order to be set down by the Justices of Peace of the said county, at their general quarter sessions, or the greater part of them, by like leave and agreement of the said Lord or Lords, in writing under his or their hands and seals, to erect, build, and set up, in fit and convenient places of habitation in such waste or common, at the general charges of the parish, or otherwise of the hundred or county, as aforesaid, to be taxed, rated, and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor; (4) and also to place inmates, or more families than one, in one cottage or house; an act made in the one and thirtieth year of her Majesty's reign, intituled, *An act against erecting and maintaining of cottages*, or any thing therein contained to the contrary notwithstanding: (5) Which cottages and places for inmates shall not at any time after be used or employed to or for any other habitation, but only for impotent and poor of the same parish, that shall be there placed from time to time by the churchwardens and overseers of the poor of the same parish, or the most part of them, upon the pains and forfeitures contained in the said former act made in the one and thirtieth year of her Majesty's reign.

§ VI. Provided always, That if any person or persons shall find themselves grieved with any cess or tax, or other act done by the said churchwardens, and other persons, or by the said Justices of Peace; that then it shall and may be lawful for the Justices of Peace, at their general quarter sessions, or the greater number of them, to take such order therein, as to them shall be thought

A remedy for them who find themselves grieved with any tax.

thought convenient; and the same to conclude and bind all the said parties.

Poor persons
relieved by their
parents or chil-
dren.

2 Bulst. 344.

5 Geo. 1. c. 8.

§ VII. And be it further enacted, That the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the Justices of Peace of that county where such sufficient persons dwell, or the greater number of them at their general quarter sessions, shall be assessed, (2) upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein.

Officers of cor-
porate towns
have the au-
thority of Jus-
tices of Peace.

§ VIII. And be it further hereby enacted, That the Mayors, Bailiffs, or other head-officers of every town and place corporate, and city, within this realm, being Justice or Justices of Peace, shall have the same authority by virtue of this act, within the limits and precincts of their jurisdictions, as well out of the sessions, as at their sessions, if they hold any, as is herein limited, prescribed, and appointed to Justices of the Peace of the county, or any two or more of them, or to the Justices of the Peace in their quarter sessions, to do and execute for all the uses and purposes in this act prescribed, and no other Justice or Justices of Peace to enter or meddle there: (2) And that every Alderman of the city of London within his ward shall and may do and execute, in every respect, so much as is appointed and allowed by this act to be done and executed by one or two Justices of Peace of any county within this realm.

Aldermen of
London.

A parish ex-
tending into
two counties,
or into two li-
berties.

2 Bulst. 351.

§ IX. And be it also enacted, That if it shall happen any parish to extend itself into more counties than one, or part to lie within the liberties of any city, town, or place corporate, and part without, That then, as well the Justices of Peace of every county, as also the head-officers of such city, town, or place corporate, shall deal and intermeddle only in so much of the said parish as lieth within their liberties, and not any further: (2) And every of them respectively within their several limits, wards, and jurisdiction, to execute the ordinances before mentioned, concerning the nomination of overseers, the consent to binding apprentices, the giving warrant to levy taxations unpaid, the taking account of churchwardens and overseers, and the committing to prison such as refuse to account, or deny to pay the arrearages

rearages due upon their accounts: (3) and yet nevertheless, the said churchwardens and overseers, or the most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish in all things to them belonging, and shall duly exhibit and make one account before the said head-officer of the town or place corporate, and one other before the said Justices of Peace, or any such two of them as is aforesaid.

§ X. And be it further enacted by the authority aforesaid, That if in any place within this realm, there happen to be hereafter no such nomination of overseers yearly, as is before appointed, That then every Justice of Peace of the county, dwelling within the division where such default of nomination shall happen, and every Mayor, Alderman, and head-officer of city, town, or place corporate, where such default shall happen, shall lose and forfeit for every such default five pounds, to be employed towards the relief of the poor of the said parish or place corporate, and to be levied, as aforesaid, of their goods, by warrant from the general sessions of the peace of the said county, or of the same city, town, or place corporate, if they keep sessions.

The Justices
forfeiture for
not naming of
overseers.

§ XIX. And be it further enacted, That if any action of trespass, or other suit, shall happen to be attempted and brought against any person or persons, for taking of any distress, making of any sale, or any other thing done by authority of this present act, the defendant and defendants in any such action or suit shall and may either plead Not guilty, or otherwise make avowry, cognizance, or justification for the taking of the said distresses, making of sale, or other thing doing by virtue of this act, alledging in such avowry, cognizance, or justification, That the said distress, sale, trespass, or other thing, whereof the plaintiff or plaintiffs complained, was done by authority of this act, and according to the tenor, purport, and effect of this act, without any expressing or rehearsal of any other matter or circumstance contained in this present act: (2) To which avowry, cognizance, or justification, the plaintiff shall be admitted to reply, That the defendant did take the said distress, made the said sale, or did any other act of trespass supposed in his declaration, of his own wrong, without any such cause alledged by the said defendant; (3) whereupon the issue in every such action shall be

The defendant's
plea in a suit
commenced a-
gainst him upon
this statute.

Brampton's case
Rolls R. 272.

joined

Treble damages
for the defend-
ant and his
costs.

joined to be tried by verdict of twelve men, and not otherwise, as is accustomed in other personal actions: (4) And upon the trial of that issue, the whole matter to be given on both parties in evidence according to the very truth of the same; (5) and after such issue tried for the defendant, or nonsuit of the plaintiff after appearance, the same defendant, to recover treble damages, by reason of his wrongful vexation in that behalf, with his costs also in that part sustained, and that to be assessed by the same jury, or writ to inquire of the damages, as the same shall require.

§ XX. Provided always, That this act shall endure no longer then to the end of the next session of parliament. 3 Car. 1. c. 4. *Continued until the end of the first session of the next parliament, and further continued by 16 Car. 1. c. 4.*

Anno 1 Jacobi 1. Cap. 25.

An Act for continuing and reviving of divers Statutes, and for repealing some others.

18 Elis. c. 2. § X. **A**ND so much of one other act made the same eighteenth year, intituled, *An act for setting the poor on work, and avoiding of idleness; as concerning bastards begotten out of lawful matrimony*

43 Elis. c. 3. § XXIII. An act, intituled, *An act for the relief of the poor*; with this addition, *viz.* Be it enacted, That all persons to whom the overseers of the poor shall, according to this act, bind any children apprentices, may take and receive, and keep them as apprentices; any former statute to the contrary notwithstanding.

Anno 7 Jaci 1. Cap. 3.

An act for the continuing and better Maintenance of Husbandry and other Manual Occupations, by the true Employment of Monies given and to be given for the binding out of Apprentices.

FOrasmuch as the true labour and exercise of husbandry, and the bringing up of apprentices of both sexes in trades and manual occupations, are things very profitable in the commonwealth, and acceptable and pleasing unto Almighty God, there being already great sums of money freely given, and more in time to come like to be given, by divers well-disposed persons, unto the corporations of divers cities, boroughs, towns corporate, and unto divers persons in sundry towns not corporate, and parishes within this realm of *England*, to be continually employed in the binding out, as apprentices, of a greater number of the poorest sort of children unto needful trades and occupations; the experience whereof hath brought forth very great profit and commodity unto those cities, towns, and parishes, where any parts of the said monies have been so given and employed, and so no doubt there will constantly ensue thereof the exceeding good of the commonwealth in general: And for that the most part of the poorer sorts of children would (as heretofore) without such good care and assistance be brought up in idleness, and disordered kinds of life, to their utter overthrow, and to the great prejudice of the whole commonwealth: And for that it is very likely that many other well-disposed people will be the better encouraged willingly to follow the like good example, in bestowing also good sums of monies to the same good and godly purposes, if it might be so provided, that such monies as have been already so freely given, or as hereafter shall be given, for the binding out of such poor children apprentices, may continually hereafter remain, and be wholly employed accordingly.

Apprentice,
Rat. 4.

§ II. Be it therefore enacted by the King's most Excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present parliament assembled, and by

How money
given for the
binding out of
poor children
apprentices,
shall be employed,
and by whom.

by the authority of the same, That all sums of money so freely given, at any time within three years last past, or hereafter to be given to any person or persons, to be continually employed for the binding out of apprentices, as aforesaid, shall, for ever, from henceforth continue, and be from time to time used and employed, to such uses, intents, and purposes only, and by such persons, and in such manner and form, as shall be hereafter by this present act specified and declared; except the same hath been, or shall be otherwise ordered or disposed by the givers thereof; that is to say, That all corporations of all cities, boroughs, and towns corporate, by what name or names soever they shall be known or incorporated and in towns and parishes not incorporate, the parson or vicar of every such town or parish, together with the constable or constables, the churchwarden or churchwardens, collectors, and the overseers for the poor for the time beings, or the most part of them, where any such sum or sums of money are already given, or shall be hereafter given to be so employed, shall from time to time within the said several cities, boroughs, towns, and parishes respectively, have the nomination and placing of such apprentices, and the guiding and employment of all such monies as have been heretofore so given, or which hereafter shall be given, to and for the continual binding forth of such and so many apprentices, and in such sort, as is already, or shall hereafter be so given and appointed, either by the last will and testament, or by any writing or writings under the hands and seals of any person or persons which hath already, or hereafter shall so give any sum or sums of money unto the good and godly purposes and intents aforesaid: And if the corporations of any such cities, boroughs, or towns, corporate, by what name or names soever they shall be called or incorporated, or any the person or persons in the other towns and parishes above mentioned, appointed by this act to have continually the guiding and employment of such sums of monies so already given, or hereafter to be given, to the intents and purposes aforesaid, shall at any time hereafter wilfully forbear or refuse, according to their duties in this behalf, to employ such sums of money so given or to be given, as aforesaid, for the binding out of such apprentices, by means of which wilful forbearance or refusing, the said money shall not be employed accordingly, that they and every of them, so offending contrary to this act shall forfeit for every such offence the

The forfeiture
of not employ-
ing the monies.

sum

sum of three pounds six shillings and eight pence lawful *English* money, the one half thereof to be given to the poor of the town or parish where such default or offence shall be done or committed, the other moiety to the party that shall sue for the same; and that every man that will, may and shall be admitted to sue for the same moiety, for the use and benefit of the said poor, and shall be also admitted to sue for the forfeiture of the other moiety, in any of the King's majesty's Courts of Record, to his own benefit and behoof, by action of debt, bill, plaint, or information, wherein no protection, wager of law, or essoin, shall be admitted or allowed.

§ III. And for that all moneys so given may the better continue to and for the purpose aforesaid, be it enacted by the authority aforesaid, That the Master, Mistress, or Dame, of every such apprentice or apprentices that shall receive any such sum or sums of money, as aforesaid, shall become bound with one or two sufficient sureties, by bond or obligation, in double the sum which they and every of them shall so receive with such apprentice or apprentices, as aforesaid, unto the corporation of any such city or town corporate, by what name or names soever they shall be called or incorporated, or to such person or persons in the other towns and parishes not incorporated, appointed by this act to have continually the guiding and employment of all such sums of money so already given, or hereafter to be given, to the intents and purposes aforesaid respectively; upon condition to repay such sums of money as he or she shall receive with such apprentice or apprentices, at the end of seven years next ensuing the date of the said obligation, or within three months next after the end of the said seven years: And if such apprentice shall happen to die within the said space of seven years, then within one year after his or her said death; and if the Master, or Mistress, or Dame, to whom any such apprentice or apprentices shall be bound, shall happen to die within the said space of seven years, then within one year next after his or her death; so as the said monies may be again employed for placing such apprentice with some other person of the same trade, to serve out the residue of the years of his or her former apprenticeship, by the discretion of the said person trusted as aforesaid.

§ IV. And be it further enacted by the authority aforesaid, That every such sum or sums of money so given or to be given, in manner and form, and to and for

The party which receiveth the money, shall be bound with sufficient sureties to repay

that for which all to him of the same order

Within what time the money shall be put the forth.

A provision if
there be not
fit persons in
that parish to be
apprentices.

What sort of
persons shall be
apprentices.

Account shall
be made of the
money employ-
ed.

the good uses and intents aforesaid, shall always be put forth and employed by the parties aforesaid that by this act shall have the disposing and employment thereof, within three months at the farthest, after such money shall come to the hands of the said parties, that by the intent and true meaning of this act ought to dispose and employ the same; and if at such times there shall not be found fit and apt persons to be bound out apprentices as aforesaid, within the said cities, towns, and parishes where such sums of money are, or hereafter shall be given to be employed as afore is declared, then such of the poorest children of any of the parishes next adjoining shall be bound apprentices in manner as aforesaid, as by the care and good descriptions of the parties, which by this act have the disposing and employment of the said sums of money in the cities, towns, and parishes where it was first given to be employed, shall be thought fit and convenient, taking such bonds and obligations of the persons that shall receive the same sums of money so put forth, and with such sureties, and upon such conditions, as is above-mentioned and declared.

§ V. Provided always, and be it enacted by the authority aforesaid, That choice from time to time be made of the poorest sort of children of every such city, town, and parish, where such monies shall be so given, and whose parents are least able to relieve them: And that no such apprentice shall be above the age of fifteen years when he or she shall be so first bound out an apprentice.

§ VI. And for the better execution of this act, be it further enacted by the authority aforesaid, That all and every person and persons appointed by this act to have the employing and disposing of any sum or sums of money so given or to be given as aforesaid, within any town or parish not corporate, shall, after the end of this present session of parliament, once every year in the *Easter* week, or within one month next after *Easter* day, make a true and perfect account before four, three or two justices of the peace dwelling in or next to every the said towns or parishes, of all such sum and sums of money as they or any of them have employed in binding of apprentices by virtue of this act, and of all bonds and obligations taken for the payment thereof, and also of all such sums of money as then shall happen to be remaining in their hands not employed: And also shall, at the making and yielding up of the said account, or within ten days next following, yield and deliver

unto such as shall happen next to succeed them, or then to be in the said rooms and places, all such obligations and bonds, as by them or any of them have been before that time taken to the uses aforesaid; as also all sums of money remaining in their or any of their hands, to be employed as aforesaid, and not employed at the time of the yielding up the said account.

§ VII. And be it further enacted by the authority aforesaid, That if any of the parties appointed and trusted by this act to have the disposing and employment of any of the said sums of money so given or to be given as aforesaid, shall in any point or degree break the trust and confidence in them in this behalf reposed, or shall commit any other misdemeanor or offence in this employing of the said sums of money, or any part thereof, or in doing any other act or acts contrary to their duties, and the true intent and meaning of this act, for which there is not by this act any penalty given or appointed, then it shall and may be lawful for any person or persons whatsoever, in the behalf of the poor of such city, borough, or parish, to exhibit his petition to the Lord Chancellor, or Lord Keeper of the great seal of *England* for the time being, touching the same: Which Lord Chancellor or Lord Keeper of the great seal of *England*, for the time being, shall thereupon have full power and authority to award a commission out of the high Court of *Chancery* under the great seal of *England*, to such and so many persons as his Lordship shall think meet, to inquire, hear, and determine the said offences, and every of them: And if the said commissioners, or the most part of them, shall find that any sum or sums of money so given, or to be given, are lost, impaired, wasted, or diminished, then they, or the most part of them, shall likewise have power, by virtue of this act, and of their said commission, to rate, raise, and collect the said sum of money so lost, impaired, wasted, or diminished, upon such person or persons, in places not incorporate, as by this act are appointed to have the guiding and ordering of the said monies, if they, or any of them, have failed in there said duties in that behalf, or otherwise upon the able inhabitants of such city, town, or parish, where the same shall so happen, as in the discretion of the said commissioners, or the greatest part of them, shall be thought fittest, and to return the said commission, and the manner of the execution thereof, into the said high Court of *Chancery* within

A remedy where any party trusted shall break the trust, or commit any offence,

A remedy for
any party grieved
by the commis-
sioners.

three months after the execution, hereof: And if any person or persons shall find himself grieved by any thing done by the said commissioners, then, upon complaint made in the high Court of Chancery, the said Lord Chancellor, or Lord Keeper, for the time being, shall have full power and authority, to order and decree the same, as to his Lordship shall be thought most fit to stand with equity and good conscience.

And where a
bailiff or other
officer of the
said commissioners
shall have done
any wrong or
injury to any
person, he shall
be liable to be
sued by the
party so wronged
or injured.

7 Jac. B. C. 4. § 17.

The punishment
of lewd women
which have bas-
tards, 18 E. 3.
a Blustr. 438.

§ VII. AND because great charge ariseth upon many places within this realm by reason of bastardy, besides the great dishonour of Almighty God, Be it therefore enacted by the authority aforesaid, That every lewd woman, which after this present session of parliament shall have any bastard which may be chargeable to the parish, the justices of peace shall commit such lewd woman to the house of correction, there to be punished, and set on work during the term of one whole year; (2) and if she shall afterwards offend again, That then to be committed to the said house of correction, as aforesaid, and then to remain until she can put in good sureties for her good behaviour, not to offend so again.

A remedy for
them that run
away, and leave
their children
to the charge of
the parish.

§ VIII. And for that many wilful people finding that they having children, have some hope to have relief from the parish wherein they dwell, and being able to labour, and thereby to relieve themselves and their families, do nevertheless run away out of their parishes, and leave their families upon the parish; (2) for remedy whereof, Be it further enacted by this present parliament and the authority of the same, that all such persons so running away, shall be taken and deemed incorrigible rogues, and endure the pain of incorrigible rogues: (3) And if either such man or woman being able to work, and shall threaten to run away, and leave their families, as aforesaid, the same being proved by two sufficient witnesses upon oath before two justices of Peace in that division; that then the said persons so threatening, shall by the said justices of Peace be sent to the houses of correction, (unless he or she can put in sufficient sureties for the discharge of the parish) there to be dealt with and detained as a sturdy and wandering rogue, and to be delivered at the said assembly or meeting, or at the quarter sessions, and not otherwise.

Anno

Anno 3 Caroli 1. cap. 4. (5.)

§ XV. **A**ND so much of an act made in the eighteenth^{18 Elis. c. 3.} year of the reign of the said late Queen Elizabeth, intituled, *An act for the setting the poor to work, and avoiding idleness*, as concerneth bastards begotten out of lawful matrimony: with this, That all justices of the peace within their several limits and precincts, and in their several sessions, may do and execute all things concerning that part of the said statute, that by justices of the peace in the several counties are by the said statute limited to be done.

§ XXII. And the several acts hereafter mentioned,^{39 Elis. c. 4.} made in the thirty-ninth year of the reign of the late Queen Elizabeth, that is to say, An act, intituled, *An act for the punishment of rogues, vagabonds and sturdy beggars*, with the provision annexed thereunto, by one act^{43 Elis. c. 2.} made in the first Year of the reign of the late King James, intituled, *An act for the continuing and reviving of divers statutes, and for repealing of some others*: An act, intituled *An act for relief of the poor*; with the addition thereunto made by an act made in the first year of the reign of the late King James, intituled, *An act for continuing of divers statutes, and for repeal of some others*, and with this further addition; and be it further enacted, That all persons to whom the overseers of the poor shall, according to the said act, bind any children apprentices, may take and receive, and keep them as apprentices; and also that the churchwardens and overseers of the poor, mentioned in the said act made in the said three and fortieth year, may, by and with the consent of two or more justices of the peace (whereof one to be of the *Quorum*) within their respective limits, wherein shall be more Justices than one; and where no more shall be than one, with the assent of that one justice of the peace set up, use, and occupy, any trade, mystery, or occupation, only for the setting on work, and better relief of the poor of the parish, town, or place, of or within which they shall be churchwardens or overseers of the poor; any former statute to the contrary notwithstanding: And one act, intituled, *An act to prevent the destroying and murdering of bastard children by virtue of this act*,^{21 Jac. I. c. 25.}

The overseers of the poor may put out apprentices.
The churchwardens, &c. may set up any trade to find the poor work.

act, shall be and continue until the end of the first session of the next parliament, in force and effect, as the same were the first day of the session of parliament holden in the first year of the reign of our sovereign Lord the King that now is.

Continued till
some other act
be made for
continuance or
discontinuance
of the said act
by 16 Car. I.
c. 4.

§ XXIII. Provided nevertheless, That so much of every of the said acts, as by any new act made in this session of parliament are or shall be explained, altered, or repealed, shall, for so much thereof, from the end of this session of parliament, stand and be in force, as by those other acts shall be ordained.

Anno 13 & 14 Caroli 2. cap. 12.

An act for the better relief of the poor of this Kingdom.

The occasion
of increase of
poor.

W Hereas the necessity, number, and continual increase of the poor, not only within the cities of *London* and *Westminster*, with the liberties of each of them, but also through the whole kingdom of *England* and dominion of *Wales*, is very great, and exceeding burthensome, being occasioned by reason of some defects in the law concerning the settling of the poor, and for want of a due provision of the regulations of relief and employment in such parishes or places where they are legally settled, which doth inforce many to turn incorrigible rogues, and others to perish for want, together with the neglect of the faithful execution of such laws and statutes as have formerly been made for the apprehending of rogues, and vagabonds, and for the good of the poor: For remedy whereof, and for the preventing the perishing of any of the poor, whether young or old, for want of such supplies as are necessary: May it please your most Excellent Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, That whereas by reason of some defects in the law, poor people are not restrained from going from one parish

Poor people go-
ing from one
parish to ano-
ther.

to another, and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers; be it therefore enacted by the authority aforesaid, That it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle, as aforesaid, in any tenement under the yearly value of ten pounds, for any two Justices of the peace, whereof one to be of the *Quorum*, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least; unless he or they give sufficient security for the discharge of the said parish to be allowed by the said justices.

How to be settled, coming to any tenement under 10 l. yearly value.

§ II. Provided always, That all such persons who think themselves aggrieved by any such judgment of the said two Justices, may appeal to the justices of the peace of the said county at their next quarter sessions, who are hereby required to do them justice, according to the merits of their cause.

Persons grieved may appeal to the quarter-sessions.

§ III. Provided also, That (this act notwithstanding) it shall and may be lawful for any person or persons to go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, so that he or they carry with him or them a certificate from the minister of the parish, and one of the churchwardens and one of the overseers for the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children, or some of them, there (or otherwise, as the condition of the persons shall require) and is declared an inhabitant or inhabitants there: And in such case, if the person or persons shall not return to the place aforesaid, when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases aforesaid, but that it shall and may be lawful for two Justices of the Peace

Persons going to work in harvest.

to convey the said person or persons to the place of his or their habitation, as aforesaid, under the pains and penalties in this act prescribed: And if such person or persons shall refuse to go, or shall not remain in such parish where they ought to be settled, as aforesaid, but shall return of his own accord to the parish from whence he was removed, it shall and may be lawful for any Justice of the Peace of the city, county, or town corporate, where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a publick work-house in this present act hereafter-mentioned, there to be employed in work or labour: And if the churchwardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive such person or persons, and to provide work for them, as other inhabitants of the parish, any Justice of Peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf.

Putative fathers
of bastard chil-
dren, how to
be proceeded a-
gainst,

§ XIX. And whereas the putative fathers and lewd mothers of bastard children run away out of the parish, and sometimes out of the county, and leave the said bastard children upon the charge of the parish, where they are born, although such putative father and mother have estates sufficient to discharge such parish; be it therefore enacted by the authority aforesaid, that it shall and may be lawful for the churchwardens and overseers for the poor of such parish, where any bastard child shall be born, to take and seize so much of the goods and chattles, and to receive so much of the annual rents or profits of the lands of such putative father or lewd mother, as shall be ordered by any two Justices of Peace as aforesaid, for or towards the discharge of the parish, to be confirmed at the sessions, for the bringing up and providing for such bastard child: And thereupon it shall be lawful for the sessions to make an order for the churchwardens and overseers for the poor of such parish, to dispose of the goods by sale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions as aforesaid, of his or her lands.

Persons sued
for matters in
this act, may
plead the gene-
ral issue

§ XX. And if any person or persons shall be sued for any matter or thing which he shall do in execution of this

this act, he may plead the general issue, and give the special matter in evidence; and if the verdict shall pass for the defendant, or if the plaintiff be nonsuited, or discontinued his suit, the defendant shall recover treble damages.

§ XXI. Whereas the inhabitants of the counties of Lancashire, Che-
Lancashire, Cheshire, Derbyshire, Yorkshire, Northumberland, shire, York-
the Bishoprick of *Durham, Cumberland, and Westmorland,* shire, Derby-
and many other counties in *England and Wales,* by rea- shire, Northum-
son of the largeness of the parishes within the same, have berland, Dur-
not, or cannot reap the benefit of the act of parliament ham, Cumber-
made in the three and fortieth year of the reign of the late land, Westmor-
Queen *Elizabeth*, for relief of the poor: Therefore be it land, 43 El. cap.
enacted by the authority aforesaid, That all and every the 2.
poor, needy, impotent, and lame person and persons within
every township or village within the several counties a-
foresaid, shall, from and after the passing of this act, be
maintained, kept, provided for, and set on work, with-
in the several and respective township and village where-
in he, she, or they shall inhabit, or wherein he, she, or
they was or were last lawfully settled, according to the
intent and meaning of this act, and that there shall be
yearly chosen and appointed, according to the rules and
directions in the said act of the three and fortieth year
of Queen *Elizabeth* mentioned, two or more overseers of
the poor within every of the said townships or villages,
who shall, from time to time, do, perform, and execute
all and every the acts, powers, and authorities, for the ne-
cessary relief of the poor within the said township or vil-
lage, and shall lose, forfeit, and suffer all such pains and
penalties for nonperformance thereof, as is limited, men-
tioned and appointed in and by the said in part recited act.

§ XXII. And be it further enacted by the authority
aforesaid, That the Justices of Peace within the said coun-
ties shall have and enjoy such and the like powers and
authorities to raise and levy monies, and to do and exe-
cute all and every such other act and thing whatsoever,
within every township or village within the said county
where they are Justices, as is given, limited, and ap-
pointed unto and for them to do and execute within any
parish or parishes, in and by the said act made in the said
three and fortieth year of the said late Queen *Elizabeth*,
under such and the like pains and penalties for the non-
performance of their duties, to be levied and disposed of
as is nominated and expressed in the said act.

The power of
Justices to raise
monies, &c.

§ XXIII.

XXVI

I Jac. 2. c. 17.

And to transport
rogues and vaga-
bonds.

The continuance
of divers parts
of this act.

17 Geo. II. c.
5.

§ XXIII. Provided always, and be it enacted by the authority aforesaid, That it shall and may be lawful for the justices of peace in any of the counties of *England* and *Wales*, in their quarter sessions assembled, or the major part of them, to transport, or cause to be transported, such rogues, vagabonds, and sturdy beggars as shall be duly convicted, and adjudged to be incorrigible, to any of the *English* plantations beyond the seas.

§ XXV. Provided always, That this act, as to all the matters therein contained (excepting what relates unto the corporations mentioned and constituted thereby) shall extend and be in force until the nine and twentieth day of *May*, one thousand seven hundred sixty-five, and to the end of the first sessions of the next parliament then next ensuing, and no longer.

Anno 1 Jacobi 2. c. 17.

23 and 14 C. II.
c. 12. revived
for 7 years,
except as to the
corporation.

§ II. **A**ND be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That one act of parliament, made in the thirteenth and fourteenth years of his said late Majesty's reign, intituled, *An act for the better relief of the poor of this kingdom* (except what relates unto the corporation therein mentioned, and constituted thereby) shall be in force from the first day of the present session of parliament, and so to continue for the space of seven years, and from thence to the end of the next session of parliament.

Settlement to be
accounted from
notice in writ-
ting.

§ III. And forasmuch as such poor persons, at their first coming to a parish, do commonly conceal themselves; be it therefore hereby provided and enacted by the authority aforesaid, That the forty days continuance of such person in a parish, intended by the said act to make a settlement, shall be accounted from the time of his or her delivery of notice in writing (which they are hereby required to do) of the house of his or her abode, and the number of his or her family, if he or she have any, to one of the churchwardens or overseers of the poor of the said parish, to which they shall so remove.

Anno

Anno 3 Gulielmi & Mariæ, cap. 11.

An act for the better explanation and supplying the defects of the former laws for the settlement of the poor.

WHEREAS one act of parliament made in the thirteenth and fourteenth years of his late Majesty King *Charles* the second, intituled *An act for the better relief of the poor of this Kingdom* (except what relates to the corporation therein mentioned, and constituted thereby) was revived and continued, with some alterations, by one other act made in the first year of the late King *James* the second, and have been found by experience to be good and wholesome laws, but may shortly expire.

§ II. Be it therefore enacted by the King's and Queen's most excellent majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said acts, as to what relates to the settlements of the poor, shall be in force from the first day of *March* one thousand six hundred ninety-one.

§ III. But forasmuch as the said acts are somewhat defective and doubtful; for supplying and explaining the same; be it further provided and enacted by the authority aforesaid, That the forty days continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing which he or she shall deliver of the house of his or her abode, and the number of his or her family if he or she have any, to the churchwarden or overseer of the poor, which said notice in writing the said churchwarden or overseer of the poor is or are hereby required to read, or cause to be read publicly, immediately after divine service in the church or chapel of the said parish or town, on the next Lord's day when there shall be divine service in the same; and the said churchwarden or overseer of the poor is or are hereby required to register, or cause to be registered, the said notice in writing in the book kept for the poor's accounts.

The note of settlement must be read in the church, and registered in the poor's book.

No soldier, &c.
to have settle-
ment before dis-
mission,

§ IV. Provided always, and be it enacted, That no soldier, seaman, shipwright, or other artificer or workman employed in their majesties service, shall have any settlement in any parish, port-town, or other town, by, delivery and publication of a notice in writing as aforesaid, unless the same be after the dismissal of such person out of their majesties service.

Penalty upon
churchwarden re-
fusing to read or
register.

§ V. And be it further enacted. That if any churchwarden or overseer of the poor shall refuse or neglect to read, or cause to be read, such notice in writing as aforesaid, in such manner, place, and time as aforesaid, he or they for every such offence (upon proof thereof by two credible witnesses upon oath, before any Justice of the Peace of the same county, riding, or division, city, or town corporate, where complaint thereof shall be made) shall forfeit the sum of forty shillings to the use of the party grieved, to be levied by distress and sale of the offender or offenders goods by warrant under the hand and seal of any Justice of the Peace within the said jurisdictions respectively, to the constable of the parish, or town, where such offender or offenders dwell, the overplus, if any be, to be returned to the owner or owners and for want of such sufficient distress, the said justice shall commit him or them to the common gaol of the said county, city or town corporate, there to remain without bail or mainprize for the space of one month; and if any churchwarden or overseer of the poor shall refuse or neglect to register or cause to be registered such notice in writing as aforesaid, he or they so offending, upon the like conviction, shall forfeit the sum of forty shillings, to the use of the poor of the parish or town where such offender or offenders dwell, to be levied as aforesaid; the overplus, if any be, to be returned to the owner or owners; and for want of such sufficient distress, then the said Justice shall commit such offender or offenders as aforesaid, for the time aforesaid.

Serving as of-
ficer, or paying
parish duties, a
settlement.

§ VI. Provided always, and be it enacted, That if any person, who shall come to inhabit in any town or parish, shall for himself and on his own account execute any publick annual office or charge in the said town or parish, during one whole year, or shall be charged with and pay his share towards the publick taxes or levies of the said town or parish, then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing be delivered and published, as is hereby before required.

§ VII. And it is hereby further enacted, that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein, though no such notice in writing be delivered and published, as is herein before required.

Service for a year, of person without wife or child, a settlement.

§ VIII. And it is hereby further enacted, That if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published as afore-said.

Apprenticeship a settlement.

§ IX. Provided always and be it hereby enacted, That if any person or persons shall find him, her or themselves aggrieved by any determination, which any Justice or Justices of the Peace shall make in any of the cases aforesaid, the said person or persons shall have liberty to appeal to the next general quarter sessions of the peace, to be held for the said county, riding, or division, city, or town corporate, who, upon full hearing of the said appeal, shall have full power finally to determine the same.

Appeal from justices of peace to quarter sessions, whose order shall be final.

§ X. And be it further enacted, That if any person be removed by virtue of this act, from one county, riding, city, town corporate, or liberty, to another, by warrant under the hands and seals of two Justices of Peace, the churchwardens or overseers of the poor of the said parish or town, to which the said person shall be so removed, are hereby required to receive the said person, and if he or they shall refuse so to do, he or they so refusing or neglecting (upon proof thereof by two credible witnesses, upon oath before any Justice of the Peace of the county, riding, city, or town corporate, to which the said person shall be so removed) shall forfeit for each offence the sum of five pounds, to the use of the poor of the parish or town from which the said person was removed, to be levied by distress and sale of the offender or offenders goods, by warrant under the hand and seal of any Justice of the Peace of the county, riding, city, or town corporate, to which such person was removed, to the constable of the parish or town where such offender or offenders dwell, which warrant the said Justice is hereby empowered and required to make; the overplus, if any be, to be returned to the owner or owners; and for want of such sufficient distress, then the said Justice shall commit the said offender or offenders to the common gaol.

Churchwarden must receive a person removed by warrant of two Justices of Peace, upon 5 l. penalty.

Persons aggrieved by such removal may appeal to sessions.

goal of the said county, riding, city, or town corporate or liberty, there to remain, without bail or mainprize for the space of forty days. Provided always, and be it hereby enacted, that all such persons who think themselves aggrieved with any such judgment of the said two justices, may appeal to the next general quarter sessions of the Peace, to be held for the county, riding, city, town corporate, or liberty, from which the said person was so removed.

43 El. c. 2.
A register to be kept of the admittances of the poor.

Parishioners yearly in Easter week shall make a list of their poor.

None but those in the list to receive alms, except by order of Justices of Peace, &c. Farther provisions relating hereto, 9 Geo. 1 c. 7. § 1.

§ XI. And whereas many inconveniencies do daily arise in cities, towns corporate, and parishes, where the inhabitants are very numerous, by reason of the unlimited power of the churchwardens and overseers of the poor who do frequently, upon frivolous pretences (but chiefly for their own private ends) give relief to what persons and number they think fit and such persons, being entered into the collection bill, do become after that a great charge to the parish, notwithstanding the occasion or pretence of their receiving collection oftentimes ceases; by which means the rates for the poor are daily increased, contrary to the true intent of a statute, made in the forty-third year of the reign of her Majesty Queen Elizabeth, intituled, *An act for the relief of the poor*: For remedying of which, and preventing the like abuses for the future, be it further enacted, That from and after the first day of *March*, there shall be provided and kept in every parish at the charge of the same parish a book or books, wherein the names of all such persons who do or may receive collection shall be registered, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity; and that yearly in *Easter Week* (or as often as it shall be thought convenient) the parishioners of every parish shall meet in their vestry or other usual places of meeting in the same parish, before whom the said book shall be produced; and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entered of such persons as they shall think fit and allow to receive collection, and that no other person be allowed to have or receive collection at the charge of the said parish, but by authority under the hand of one Justice of Peace residing within such parish, (or if none be there dwelling) in the parts near or next adjoining, or by order of the Justices in their respective quarter sessions, except in cases of pestilential diseases, plague, or small pox, for and

and in respect of such families only, as are or shall be therewith inserted.

§ XII. And whereas many churchwardens and overseers of the poor, and other persons intrusted to receive collections for the poor, and other publick monies relating to the churches and parishes whersunto they do belong, do often mispend the said monies, and take the same to their own use, to the great prejudice of such parishes, and the poor, and other inhabitants thereof: and because that many times the Judges, when actions are brought against such churchwardens and overseers to recover the monies so mispent, taken, or misapplied by the persons aforesaid, refuse to admit the parishioners to be witnesses in such cases, who are the only persons that can make proof thereof: Wherefore to prevent all such evil and deceitful practices of churchwardens, and overseers, and other persons, be it enacted and declared, That in all actions to be brought in their Majesty's Courts of Record at Westminster, or at the assizes, for the recovery of any sum or sums of money so mispent or taken by churchwardens or overseers of the poor, the evidence of the parishioners, or any of them, other then of such as receive alms, or any pension, or gift out of such collections or publick monies of such parish or parishes respectively whereof the defendant or defendants is or are inhabitant or inhabitants, shall be taken and admitted in all such cases in the courts aforesaid; any custom, rule, order, or usage to the contrary notwithstanding.

Anno 8 & 9 Gulielmi 3. c. 30.

An act for supplying some defects in the laws for relief of the poor of this kingdom.

FORASMUCH as many poor persons chargeable to the parish, township, or place where they live, merely for want of work, would, in any other place where sufficient employment is to be had, maintain themselves and families, without being burthenfome to any parish, township, or place, but not being able to give such security as will or may be expected and required upon

Persons coming to inhabit in any parish or place, and bringing with them a certificate under the churchwardens hands, &c. owning them to be inhabitants of such other parish, the said other parish to provide for them whenever they ask relief of the parish to which such certificate was given.

Explained by
9 & 20 W. 3.
c. 12. and 12.

Ann. stat. 1.

c. 12. § 2.

Such witness to swear to the execution of certificates, &c.

3 Geo. 2. c. 29.

§ 8. And shall not be removed before.

upon their coming to settle themselves in any other place, and the certificates that have been usually given in such cases having been oftentimes construed into a notice in handwriting, they are, for the most part confined to live in their own parishes, townships or places, and not permitted to inhabit elsewhere, though their labour is wanted in many other places, where the increase of manufactures would employ more hands; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present parliament assembled, That if any person or persons whatsoever, that from and after the first day of May, which shall be in the year of our Lord one thousand six hundred and ninety-seven, shall come into any parish or other place, there to inhabit and reside, shall at the same time procure, bring and deliver to the churchwardens or overseers of the poor of the parish or place, where any such person shall come to inhabit, or to any or either of them, a certificate under the hands and seals of the churchwardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons mentioned in the said certificate to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate having been allowed of, and subscribed by two or more of the Justices of the peace of the county, city, liberty, borough, or town-corporate, wherein the parish or place, from whence any such certificate shall come, doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his or her family, as inhabitants of that parish, whenever he, she or they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place to which such certificate was given; and then, and not before, it shall and may be lawful for any such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought.

§ III. And for the more effectual preventing of vexatious removals, and frivolous appeals, be it further enacted by the authority aforesaid, That the Justices of the Peace of any county or riding in their general or quarter sessions of the peace, upon any appeal before them there to be had, for and concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the churchwardens or overseers of the poor of any parish or place (though they did not afterwards prosecute such appeal) shall at the same quarter sessions award and order to the party, for whom and in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, as aforesaid, such costs and charges in the law, as by the said Justices in their discretion shall be thought most reasonable and just, to be paid by the churchwardens, overseers of the poor, or any other person, against whom such appeal shall be determined, or by the person that did give such notice, as aforesaid; and if the person ordered to pay such costs shall happen to live in any county, riding, city, or town-corporate, or elsewhere, out of the jurisdiction of the said court, it shall and may be lawful for any Justice of the peace of the county, riding, city, liberty, or town-corporate, wherein such person shall inhabit, and every such Justice is hereby required, upon request to him for that purpose to be made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness upon oath, by warrant under his hand and seal to cause the money mentioned in that order to be levied by distress and sale of the goods of the person that is ordered and ought to pay the same; and if no such distress can or may be had, to commit such person to the common gaol of that county or liberty, there to remain by the space of twenty days.

§ IV. And whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year; be it therefore enacted and declared by the authority aforesaid, that no such person so hired as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.

43 Elis. c. 2.

Poor children bound apprentices pursuant to the act 43 Elis. c. 2. those to whom they are bound, to provide for them according to the indenture signed by the Justices, &c. Penalty on offender.

Persons to whom poor children are bound, being aggrieved, may appeal to the Justices.

Appeal against any order for removal of poor person to be determined at the quarter sessions. This act not to make void churchwardens promise, &c. to take back any person in case of poverty, nor to hinder Justices of peace at St. Albans from hearing appeals for settling their poor. By 9 Geo. 1. c. 7. § 7. The like provision is made for the borough of St. Peter and hundred of Nassa Borough in Northamptonshire.

§ V. And whereas by an act made in threes and fortyeth year of the reign of Queen Elizabeth, intituled *An act for the relief of the poor*, it is amongst other things enacted, That it shall be lawful for the churchwardens and overseers of the poor of any parish, or the greater part of them, by the assent of two Justices of the Peace, whereof one to be of the *Quorum*, to bind poor children apprentices, where they shall see convenient; but there being doubts whether the persons to whom such children are to be bound, are compellable to receive such children as apprentices, that law hath failed of its due execution; be it therefore enacted and declared by the authority aforesaid, That where any poor children shall be appointed to be bound apprentices, pursuant to the said act, the person or persons to whom they are so appointed to be bound, shall receive and provide for them, according to the indenture signed and confirmed by the two Justices of the peace, and also execute the other part of the said indentures. And if he or she shall refuse so to do, oath being thereof made by one of the churchwardens, or overseers of the poor, before any two of the Justices of the peace for that county, liberty, or riding, he or she shall for every such offence forfeit the sum of ten pounds, to be levied by distress and sale of the goods of any such offender, by warrant under the hands and seals of the said Justices, the same to be applied to the use of the poor of that parish or place where such offence was committed; saving always to the person, to whom any poor child shall be appointed to be bound an apprentice, as aforesaid, if he or she shall think themselves aggrieved thereby, his or her appeal to the next general or quarter sessions of the peace for that county or riding, whose order therein shall be final, and conclude all parties.

§ VI. And be it further enacted by the authority aforesaid, That from and after the first day of May one thousand six hundred ninety-seven, the appeal against any order for the removal of any poor person from out of any parish, township, or place, shall be had, prosecuted, and determined, at the general or quarter sessions of the peace for the county, division, or riding, wherein the parish, township, or place, from whence such poor person shall be removed, doth lie, and not

By 9 Geo. 1. c. 7. § 7. The like provision is made for the borough of St. Peter and hundred of Nassa Borough in Northamptonshire.

not elsewhere; any former law or statute to the contrary thereof in anywise notwithstanding.

§ VII. Provided always That nothing in this act contained shall extend, or be construed to extend, to make void any promise or engagement already made by the churchwardens or overseers of the poor of any parish, township, or place, to receive and take back any persons, in case they should become poor, or want relief.

§ VIII. Provided, That this act, nor any thing therein contained, shall be construed to hinder the Justices of the Peace within the liberty of *St. Albans* from hearing and determining any appeals for the settlement of the poor in their quarter sessions, as they might have done before the making of this act; any thing therein contained to the contrary in anywise notwithstanding.

Anno 9 & 10 Gulielmi 3. cap. 11.

An Act for explaining an Act made the last Session of Parliament, intituled, *An Act for supplying some Defects in the Laws for the Relief of the Poor of this Kingdom.*

WHEREAS in and by a certain act made in the last session of this present parliament, intituled, *An act for supplying some defects in the laws for the relief of the poor of this kingdom*; it was (amongst other things therein contained) enacted, That if any person or persons whatsoever, that from and after the first day of May in the year of our Lord one thousand six hundred ninety-seven, shall come into any parish or place, there to inhabit and reside, should at the same time procure, bring, and deliver to the churchwardens or overseers of the poor of the parish or place where any such person should come to inhabit, or to any or either of them, a certificate under the hands and seals of the churchwardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place

where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons, mentioned in the said certificate, to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate having been allowed of and subscribed by two or more of the Justices of the Peace of the county, city, liberty, borough, or town-corporate, wherein the parish or place from whence any such certificate shall come, doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the certificate, with his or her family, as inhabitants of that parish, whenever he, she, or they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given; and that then, and not before, it should and might be lawful for any such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought: And whereas some doubts have arisen upon construction of the said act, by what acts any person coming to inhabit or reside within any parish, by virtue of any such certificate, as aforesaid, may procure a legal settlement in such parish, and whether such certificate did not amount to a notice in writing, in order to gain a settlement: For explaining thereof, and of the said act, be it therefore enacted and declared by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That no person or persons whatsoever, who shall come into any parish by any such certificate, as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and bona fide take a lease of a tenement of the value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office.

No person adjudged to have a legal settlement in any parish, unless he lease a tenement of the value of ten pounds per Annum, or execute some parish office.

Anno

Anno 2 & 3 Annae Reginae, cap. 6.

An Act for the Increase of Seamen, and better Encouragement of Navigation, and Security of the Coal Trade.

WHEREAS the giving due encouragement to such of the youth of this kingdom, as shall voluntarily betake themselves to the sea service, and practice of navigation, and obliging others, who, by reason of their own, or their parents poverty, are destitute of employment, or any lawful means whereby to maintain themselves, may greatly tend to the increase of able and experienced mariners and seamen, for the service of Her Majesty's Royal Navy, and for the carrying on the trade and commerce of this kingdom; be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the five and twentieth day of *March* in the year of our Lord one thousand seven hundred and four, it shall and may be lawful to and for two or more Justices of the Peace in their several and respective counties, ridings, or divisions, as also to and for all Mayors, Aldermen, Bailiffs, and other chief officers and magistrates of any city, borough, or town-corporate, within Her Majesty's kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, and likewise to and for the churchwardens and overseers of the poor for the time being, of the several and respective parishes within the places aforesaid, by and with the consent and approbation of such Justices of the Peace, Mayors, Aldermen, Bailiffs, or other the chief officers or magistrates aforesaid, to bind and put out any boy or boys, who is, are, or shall be of the age of ten years, or upwards, or who is, are, or shall be chargeable, or whose parents are or shall become chargeable to the respective parish or parishes wherein they inhabit, or who shall beg for alms, to be apprentice and apprentices to the sea service, to

Preamble, &c.
and as intended
and as intended

Parish boy. may
be put out ap-
prentice to the
sea service.

to Masters of
ships, &c.

any of Her Majesty's subjects, being masters or owners of any ship or vessel used in sea service, and belonging to any port or ports within the kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed* aforesaid, for so long a time, and until such boys shall respectively attain or come to the age of one and twenty years; and such binding out any such apprentice shall be as effectual in the law, to all intents and purposes, as if such boy were of full age, and by indenture had bound himself an apprentice:

Boy's age to be
inserted in his
indentures, &c.

And to the end that the time of the continuance of the service of such apprentice or apprentices may the more plainly and certainly appear, the age of every such boy so to be bound apprentice shall be mentioned and inserted in his indentures, being taken truly from a copy of the entry in the register book, wherein the time of his being baptized is or shall be entered (where the same can or may be had) which copy shall be given and attested by the Minister, Vicar, or Curate of such parish or parishes, wherein such boy's Baptism shall be registered, without fee or reward, and may be writ upon paper or parchment without any stamp or mark; and where no such entry of such boy's being baptized can be found, two or more of such Justices of the Peace, and such Mayors, Aldermen, Bailiffs, or other chief officers shall, as fully as they can, inform themselves of such boy's age, and from such information shall insert the same in the said indentures; and the age of such boy so inserted and mentioned in the said indentures (in relation to the continuance of his service) shall be taken to be his true age, without any further proof thereof.

Churchwardens
to pay down
50s. for boy's
necessary cloth-
ing, &c. and be
allowed the same
in their accounts,

§ II. And be it further enacted by the authority aforesaid, That the churchwardens and overseers of the poor for the time being, of the several and respective parishes from whence any such boy shall be bound apprentice to the said service, as aforesaid, shall pay down to such Master, to whom the boy is bound, at the time of his binding, the sum of fifty shillings, to provide necessary clothing and bedding for sea service, for such boy; and the charges by this act appointed, shall be allowed to the said churchwardens and overseers on their accounts.

Overseers of the
poor of any
township or vil-
lage to act as
churchwardens.

§ III. And whereas in many large parishes within this ream, there are several townships or villages, and overseers of the poor are chosen and appointed within
and

and for each such township or village respectively ; be it therefore enacted, That the overseers of the poor of every such township or village, shall and may, from time to time, within every such township or village, do, perform, and execute all and every the acts, powers, and authorities hereby enacted or directed to be done, performed, or executed by the churchwardens or overseers of the poor of a parish ; any thing herein contained to the contrary in anywise notwithstanding.

§ V. And be it further enacted, That the churchwardens and overseers of the parish, out of which any such boy shall be bound an apprentice, shall send the said indentures to the collector of Her Majesty's customs, residing at or belonging to any port or ports within this kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, whereunto such Masters or Owners of ships or vessels, to whom such apprentice or apprentices shall be bound, do or may belong ; who shall in a fair book or books to be by him kept for that purpose, fairly enter, from time to time, all and every indenture and indentures, whereby such apprentice and apprentices shall be bound, and which shall be so sent unto him, and shall make an indorsement upon the said indentures of the registry thereof, subscribed by the said collector, without taking any fee or other reward for the same : And every such collector, neglecting or refusing to enter such indentures, and indorse the same, or making false entries, shall forfeit the sum of five pounds for the use of the poor of the parish, from whence such boy was bound apprentice : And all and every such collector or collectors, or his or their lawful deputy or deputies, of the said several and respective ports, shall, from time to time, transmit certificates in writing, under his or their hands, to the Lord High Admiral of *England*, or to the commissioners of the Admiralty for the time being, containing the names and ages of every such apprentice respectively, and to what ship he belongs ; and upon receipt of such certificates, protections shall, from time to time, be made and given for such apprentices, till they attain their several and respective ages of eighteen years, without any fee or reward to be taken for the same ; which certificates, so as aforesaid to be given, are not required to be writ upon stamp paper or parchment.

Apprentice's indenture's to be sent to the collector at the port whereunto his Master belongs.

Collector to enter the same, &c.

Gratia.

Penalty on collector neglecting.

Lord Admiral to grant protections for such apprentices gratis.

83 Eliz. c. 2.

Parish boys
bound appren-
tices may be
turned over to
the sea service,

Indentures of as-
signment to be
registered.

Masters of ships,
&c. obliged to
take such ap-
prentices.

Penalty on Ma-
ster refusing.

§ VI. And be it further enacted by the authority
aforesaid, That all and every the person and persons, to
whom any poor parish boy hath been, or hereafter shall
be put apprentice, according to the statute made in
the forty-third year of the reign of Queen Elizabeth,
may with the consent and approbation of two or more
Justices of the Peace of the same county, and dwelling
in or near the same parish, where such poor boy was
bound apprentice, or by and with the consent and appro-
bation of any Mayor, Alderman, Bailiff, or other chief
officer or Magistrate of any city, borough, or town-
corporate, where such poor boy was bound appren-
tice, at the request of the Master or Mistress, then liv-
ing, of such apprentices, or to his or their executors,
administrators or assigns, by indenture assign and turn
over such poor boy apprentice to any Master or Owner
of any such ship or vessel, using the sea service, as
aforesaid, for and during the then remaining time of
his apprenticeship; which assignment and assignments
of such apprentices so, as aforesaid, shall be, and are
hereby declared to be good and effectual in the law:
All which indentures of assignment are hereby direct-
ed to be registered, and certificates thereof given and
transmitted by such collector, at the said several ports
where such parish apprentices shall be so assigned over
and bound to the sea service, in manner and form aforesaid;
and upon receipt of such certificates, protections
shall, from time to time, be made and given for such
apprentices (so to be assigned over, as aforesaid) till they
shall attain their several and respective ages of eighteen
years, without fee or reward for the same, in like man-
ner as aforesaid.

§ VIII. And for the better providing such appren-
tices with Masters for the said service, be it further
enacted by the authority aforesaid, That all and every
of Her Majesty's subjects, being Masters or Owners
of any ship or ships, vessel or vessels, used in the sea
service, as aforesaid, of the burthen of thirty ton
to the burthen of fifty ton, be obliged to take one
such apprentice, and one more for the next fifty ton,
and one more for each and every hundred ton, such
ship or vessel shall exceed the burthen of one hun-
dred ton: And such Master or Owner of any ship
or vessel refusing to take such apprentice or apprentices,
as aforesaid, shall forfeit the sum of ten pounds for
the

the use of the poor of the parish from whence such boy was bound apprentice.

§ IX. And be it further enacted, That every Master or Owner of such ship or ships, vessel or vessels, so obliged to take such apprentice or apprentices, after his arrival into any port or ports aforesaid, and before he clears out of such port, shall give an account in writing, under his hand, to the collector of such port to which he belongs, containing the names and numbers of such apprentices as are then remaining in his service.

And give an account of their names, &c.

§ XI. And it is hereby directed, That the counterpart of all and every such indentures, to be executed by the several and respective Masters of all such apprentices, shall be sealed and executed in the presence of, and attested by the collector at the port aforesaid (where such apprentices shall be bound or assigned over) and the constable or other officer, who shall bring or convey such apprentices to the said several and respective Masters; which constables or officers last-mentioned shall transmit and convey the counterparts of such indentures to the churchwardens and overseers of the several parishes from whence such apprentices shall be bound, by the same ways and means as such apprentice or apprentices were conveyed to the said several and respective ports.

The counterparts of their indentures to be transmitted to churchwardens, &c.

§ XII. And be it further enacted by the authority aforesaid, That two or more Justices of the Peace of the respective counties, and dwelling in or near any of the ports aforesaid, and all Mayors, Aldermen, Bailiffs, and other chief officers and Magistrates of any city, borough, or town-corporate, in or near adjoining to such port or ports, to which such ship or vessel shall at any time arrive, shall have full power and authority, and are hereby authorized and empowered to inquire into, and examine, hear, and determine all complaints of hard or ill usage from the several and respective Masters to such their apprentice and apprentices, so to be bound or assigned over, as aforesaid, and also of all such as already, have, or who shall at any time hereafter, voluntarily put themselves apprentices to the sea service as aforesaid, and to make such orders therein, as now they are enabled by law to do in other cases between Masters and apprentices.

Justices to detect and mine complaints of between Masters and apprentices.

§ XIII. And be it further enacted by the authority aforesaid, That every such collector in every port or ports

Collectors to keep a register &c.

and transmit a copy thereof to the quarter sessions, &c. gratis.

Penalty on collector refusing.

Officer to insert on the cocket the number of men and boys on board, &c.

Persons voluntarily binding themselves apprentices to sea service, not to be impressed for three years.

Indentures to be registered,

ports aforesaid shall in their several and respective stations, keep an exact register, containing as well the number and burthen of all such ships and vessels, together with the Masters or Owners names, as also the names of such apprentices in each ship and vessel belonging to their respective ports, and from what parishes and places such apprentices were respectively sent; and that such collectors shall transmit true copies of such register, signed by them, to the quarter sessions, or to such cities, boroughs, towns-corporate, parishes, or places, when and so often as they shall be reasonably required so to do; for which copy or copies so to be transmitted, as aforesaid, no fee or reward shall be taken: And that every such collector refusing, or willfully neglecting to transmit such copies, as aforesaid, shall, for every such refusal or neglect, forfeit five pounds, for the use of the poor of the parish, from whence such boy was bound apprentice.

§ XIV. And be it further enacted, That every custom-house officer or officers, at each and every of the ports aforesaid, shall insert, and are hereby required from time to time to insert at the bottom of their cockets, the number of men and boys on board the respective ships, or vessels at their going out of every such port, therein particularly describing the apprentices by their respective names, ages and the dates of their several indentures, for which no fee or reward shall be taken.

§ XV. And for the encouragement of all such as have or shall voluntarily bind themselves apprentices to the sea service, be it further enacted by the authority aforesaid, That all and every such person and persons, who have, or shall so voluntarily and of his or their own accord, bind or put him or themselves apprentice to any such Masters or Owners of any ship or vessel, as aforesaid, shall not be compelled or impressed into Her Majesty's sea service, or the sea service of Her Majesty's heirs or successors, for and during the term of three years, to be accounted from the dates of the respective indentures of such voluntary apprentice or apprentices; all which indentures are hereby directed to be registered, and certificates thereof given and transmitted by such collector, at the said several ports where such apprentices already have become so bound, or that hereafter shall so bind themselves, in manner and

4 Annæ Reginae, c. 19.

XLIII

and form, as aforesaid; upon receipt of which said several certificates, protections shall, from time to time, be made and given, for the said first three years of their several respective apprenticeships, without either fee or reward for the same.

and protections given for the said three years

§ XVIII. And be it further enacted by the authority aforesaid, That all the penalties and forfeitures directed by this act, shall, by warrant under the hands and seals of any two or more Justices of the Peace, of the same county, city, borough, or town corporate, be levied by distress and sale of the goods and chattels of the offender; which sale shall be good in the law against such offender.

Penalties and forfeitures how levied.

Anno 4 Annæ Reginae, cap. 19.

An Act for the Encouragement and Increase of Seamen, and for the better and speedier manning Her Majesty's Fleet.

§ XVI. **A**ND whereas by act made in the second & 3 Annæ, year of her Majesty's reign, intituled,

c. 6.

An act for the increase of seamen, and better encouragement of navigation, and the security of the coal trade, provision is made for putting out of parish children apprentices to Masters of trading ships and vessels at the age of ten years: It is hereby enacted, That no such Master shall

be obliged to take any such apprentice under the age of thirteen years, or who shall not appear to be fitly qualified both as to health and strength of body for that service; and any widow of the Master of such ship or vessel, or the executor or administrator of such Master, who shall have been obliged to take such parish boys apprentice to them, shall have the same power of assigning over such apprentices to any other Masters of ships or vessels, who have not their complement of apprentices required by the said recited act, to be entertained by them, as is given by the said act to such persons as have taken children apprentices, in pursuance of the statute made in the forty-third year of Queen Elizabeth.

No Master of ship to take apprentice under thirteen years old.

43 Eliz. c. 2.

§ XVII.

§ XVII. And whereas all such persons who in pursuance of the said act, have voluntarily bound or hereafter shall so bind themselves apprentices to such Masters or Owners, as therein is expressed, are exempted from Her Majesty's service for the term of three years, from the date of their respective indentures: And where such exemptions from Her Majesty's sea service for the term of three years, which was intended for the encouragement of landmen, to bind themselves apprentices to the sea service, hath been manifestly abused for the exempting and protecting of seamen from the said service, who having bound themselves apprentices, have claimed such exemption, and demanded protections accordingly, to the great hindrance and prejudice of Her Majesty's sea service: Be it therefore further enacted and declared, That no person or persons of the age of eighteen years, shall have any exemption or protection from Her Majesty's sea service, who shall have been in any sea service before the time they bound themselves apprentices; any law or statute to the contrary thereof in anywise notwithstanding.

No apprentices to sea service of eighteen years old, &c. exempt from the Queen's service at sea.

Anno 12 Annæ Reginae, cap. 18.

An Act for making perpetual the Act made in the Thirteenth and Fourteenth Years of the Reign of the late King Charles the Second, intituled, *An Act for the better Relief of the Poor of this Kingdom*; and that Persons bound Apprentices to, or being hired Servants, with Persons coming with Certificates, shall not gain Settlements by such Services or Apprenticeships.

WHEREAS an act made in the thirteenth and fourteenth years of the reign of the late King Charles the second, intituled, *An Act for the better relief of the poor of this kingdom*, was enacted to have continuance (except what related to the corporations therein mentioned,

13 & 14 Car. 2. c. 12.

mentioned, and thereby constituted) only until the twenty-ninth day of *May*, one thousand six hundred fifty five, and from thence to the end of the first sessions of the next parliament; which said act, by an act made in the first year of the reign of the late King *James* the second (except what related to the corporations therein mentioned, and thereby constituted) was enacted to be in force from the first day of *May* one thousand six hundred and eighty-five, and so to continue for the space of seven years, and from thence to the end of the next sessions of parliament; and by an act made in the third and fourth years of the reign of King *William* and Queen *Mary*, the said act (as to what therein related to the settlement of the poor) was enacted to be in force from the first day of *March*, one thousand six hundred ninety-one; but no provision was thereby made for continuing divers other parts of the said act, which said act, intituled, *An act for the better relief of the poor of this kingdom*, as to all parts thereof, not mentioned and continued in and by the said act made in the third and fourth years of their late Majesties (other than and except what relates to the corporations mentioned in the said act, *For the better relief of the poor of this kingdom*, and thereby constituted) was, by an act made in the fourth and fifth years of the reign of their late Majesties, continued only for the space of seven years, from the thirteenth day of *February* one thousand six hundred ninety-two, and from thence to the end of the next sessions of parliament; which said act, afterwards by an act of the eleventh and twelfth years of the reign of the late King *William* the third, intituled, *An act for continuing several laws therein mentioned*, was continued only for seven years, from the twenty-ninth day of *September* one thousand seven hundred; and which said act of the thirteenth and fourteenth years of the reign of the late King *Charles* the second, intituled, *An act for the better relief of the poor of this kingdom*, by an act made in the fifth year of the reign of Her present Majesty, intituled, *An act for continuing the laws therein mentioned relating to the poor, and to the buying and selling of cattle in Smithfield, and for suppressing of piracy*, was enacted to be in force from the twenty-fifth day of *March* one thousand seven hundred and seven (except what relates to the corporations therein mentioned, and thereby constituted) only for seven years, and from thence to the end of the next sessions of parliament; which said act

1 Jac. 2. c. 18.

3 & 4 W. & M. c. 11.

4 & 5 W. & M. c. 24. § 12.

11 & 12 W. 3. c. 13.

5 Annæ, c. 34.

of

of the thirteenth and fourteenth years of the reign of the said late King *Charles* the second, intituled, *An act for the better relief of the poor of this kingdom*, being found to be a very useful and necessary law, and being near expiring; be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said act, made in the thirteenth and fourteenth years of the said late King *Charles* the second, intituled, *An act for the better relief of the poor of this kingdom*, shall be, and is hereby made perpetual.

The act 13 & 14
Car. 2. c. 12.
made perpetual.

3 & 9 W. 3.
c. 30.

§ II. And whereas by an act made in the eighth and ninth years of the reign of the late King *William* the third, intituled, *An act for supplying some defects in the laws for the relief of the poor of this kingdom*, it was amongst other things enacted, in the words following, viz. That if any person or persons whatsoever, that from and after the first day of *May* one thousand six hundred ninety-seven, shall come into any parish or other place, there to inhabit and reside, shall at the same time procure, bring, and deliver to the churchwardens or overseers of the poor of the parish or place where any such person shall come to inhabit, or to any or either of them, a certificate, under the hands and seals of the churchwardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place, where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons mentioned in the said certificate, to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate having been allowed of, and subscribed by two or more of the Justices of the Peace of the county, city, liberty, borough, or town-corporate, wherein the parish or place, from whence any such certificates shall come doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his or her family, as inhabitants of that parish, whenever he, she, or they shall happen to become chargeable, to, or be forced to ask relief of the parish, township, or place, to which such certificate was given; and then, and not before, it shall and may be lawful

lawful for any such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought: And whereas many persons obtaining and bringing such certificates, do frequently take apprentices, bound by indenture, and hire and keep servants by the year, who by reason of such apprenticeships and services, do gain settlements in, and become a great burden to such parishes, townships, and places, though such Masters coming with such certificates, have, by virtue thereof, no settlements in such parishes, townships, or places: For remedy whereof, it is declared and enacted by the authority aforesaid, That if any person whatsoever, who, upon or after the four and twentieth day of *June* one thousand seven hundred and thirteen, shall be an apprentice, bound by indenture to, or shall, upon or after the said four and twentieth day of *June* one thousand seven hundred and thirteen, be a hired servant to or with any person whatsoever, who did come into or shall reside in any parish, township, or place, in that part of *Great Britain* called *England*, by means or licence of such certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture or binding, and such servant, by being hired by, or serving as a servant, as aforesaid, to such person, shall not gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township, or place, as if he or they had not been bound apprentice or apprentices or had not been an hired servant or servants, to such person, as aforesaid: any act or acts of parliament to the contrary notwithstanding.

After 24 June 1713, any person bound apprentice, or being a hired servant, to one who came into a parish by certificate, shall not gain a settlement there by reason of such apprenticeship, &c.

Anno

Anno 5 Georgii I. cap. 8.

An Act for the more effectual Relief of such Wives and Children as are left by their Husbands and Parents upon the Charge of the Parishes.

WHEREAS divers persons run or go away from their places of abode into other counties, or places, and sometimes out of the kingdom, some men leaving their wives, a child, or children, and some others run or go away leaving a child, or children upon the charge of the Parish or place where such child, or children was or were born, or last legally settled, although such persons have some estates, which should ease the parish of their charge, in whole, or in part; May it please Your Majesty therefore that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for the churchwardens or overseers of the poor of such parish or place where any such wife, or child, or children, shall be so left, upon application to, and by warrant or order from any two Justices of the Peace to take and seize so much of the goods and chattels; and receive so much of the annual rents and profits of the lands and tenements of such husband, father, or mother, as such two Justices of the Peace as aforesaid, shall order or direct, for or towards the discharge of the parish or place where such wife, child or children are left, for the bringing up and providing for such wife, child, or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the Justices of such quarter sessions to make an order for the churchwardens or overseers for the poor of such parish or place, to dispose of such goods and chattels by sale, or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them, as shall be ordered by the sessions, as aforesaid, of his or her lands and tenements, for the purposes aforesaid.

Churchwardens,
&c. by warrant
of two Justices,
may seize the
offender's goods,
&c.

and by order of
quarter-sessions
dispose thereof.

§. II. And be it enacted by the authority aforesaid, That the churchwardens and overseers aforesaid, shall be accountable to the Justices at the quarter sessions for all such money as they or any of them shall receive by virtue of this act.

Churchwardens
accountable for
the monies so re-
ceived.

Anno 9 Georgii 1. c. 7.

An Act for amending the Laws relating to the Settlement, Employment, and Relief of the Poor.

WHEREAS by an act of parliament made and passed in the third and fourth years of the reign of their late Majesties King *William* and Queen *Mary*, it was provided, That in every parish a book or books should be kept, wherein the names of all persons, who did or might receive collections, shall be registered, with the time when they were first admitted to such relief, and the occasion which brought them under that necessity; and that no such person should be allowed to have or receive collection at the charge of the parish, but by authority, or under the hand of one Justice of Peace residing in such parish, or if none there dwelling, in the parts near or next adjoining, or by order of the Justices at their quarter sessions, except in case of pestilential diseases, plague, or small pox: And whereas under colour of the proviso in the said act, many persons have applied to some Justices of Peace, without the knowledge of any officers of the parish, and thereby, upon untrue suggestions, and sometimes upon false or frivolous pretences, have obtained relief, which hath greatly contributed to the increase of the parish rates: For remedy whereof be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-fifth day of *March*, which shall be in the year of our Lord one thousand seven hundred and twenty-three, no Justice of Peace shall

No Justice to
order relief to
any poor person,
till oath made,
&c.

any person who
not otherwise
as a person who

order relief to any poor person dwelling in any parish until oath be made before such Justice of some matter, which he shall judge to be a reasonable cause or ground for having such relief; and that the same person had by himself, herself, or some other, applied for relief to the parishioners of the parish, at some vestry or other publick meeting of the said parishioners, or to two of the overseers of the poor of such parish, and was by them refused to be relieved, and until such Justice hath summoned two of the overseers of the poor, to shew cause why such relief should not be given, and the person so summoned hath been heard, or made default to appear before such Justice; any thing in the said proviso, or any law to the contrary notwithstanding.

Persons ordered
to be relieved, to
be entered in the
parish books.

§ II. And be it further enacted by the authority aforesaid, That the person, whom any such Justice of Peace shall think fit to order to be relieved, shall be entered in such book or books so to be kept by the parish, as one of those who is to receive collection, as long as the cause for such relief continues, and no longer; and that no officer of any parish shall (except upon sudden and emergent occasions) bring to the account of the parish any monies he shall give to any poor person of the same parish, who is not registered in such book or books to be kept by the said parish, as a person intitled to receive collection, on pain of forfeiting the sum of five pounds, to be levied by distress and sale, by warrant of any two or more Justices of the Peace of the same county, who shall have examined into, and found him guilty of such offence; which said sum shall be applied to and for the use of the poor of the said parish, by direction of the said Justice or Justices of the Peace.

Penalty on of-
ficers relieving
persons not so
entered.

Justices may act
out of their pro-
per precincts.

§ III. And for the greater ease of Justices of the Peace, whom His Majesty, or His successors, hath or shall by commission authorize to act as a Justice of the Peace for any county of this realm; be it enacted by the authority aforesaid, That if any such Justice of Peace shall happen to dwell in any city, or other precinct, that is a county of itself situate within the county at large, for which he shall be appointed Justice of Peace, although not within the same county, it shall and may be lawful for any such Justice of Peace to grant warrants, take examinations, and make orders for any matters, which any one or more Justice or Justices of the Peace may act in, at his own dwelling-house, although such dwelling-house be out of the county where

where he is authorized to act as a Justice of Peace, and in some city or other precinct adjoining, that is a county of itself; and that all such warrants, orders, and other act or acts of any Justice of Peace, and the act or acts of any constable, tithingman, headborough, overseer of the poor, surveyor of the highways, or other officer, in obedience to any such warrant or order, shall be as valid, good, and effectual in the law, although it happen to be out of the limits of the proper precinct or authority: Provided always, That nothing in this act contained shall extend to give power to the Justices of Peace for their counties at large, to hold their general quarter sessions of the Peace in cities or towns, which are counties of themselves, nor to empower Justices of the Peace, Sheriffs, Bailiffs, constables, headboroughs, tithingmen, borougholders or any other peace officers of the counties at large, to act or intermeddle in any matters or things arising within cities or towns which are counties of themselves, but that all such actings and doings shall be of the same force and effect in law, and none other, as if this act had never been made.

Exception.

§ IV. And for the greater ease of parishes in the relief of the poor, be it further enacted by the authority aforesaid, That it shall and may be lawful for the churchwardens and overseers of the poor, in any parish, town, township, or place, with the consent of the major part of the parishioners or inhabitants of the same parish, town, township, or place, in vestry or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses in the same parish, township, or place, and so contract with any person or persons for the lodging, keeping, maintaining, and employing any or all such poor in their respective parishes, townships, or places, as shall desire to receive relief or collection from the same parish, and there to keep, maintain, and employ all such poor persons, and take the benefit of the work, labour, and service of any such poor person or persons, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor person or persons, who shall be there kept or maintained; and in case any poor person or persons of any parish, town, township, or place, where such house or houses shall be so purchased or hired, shall refuse to be lodged, kept, or maintained in such house or houses, such poor person or persons so refusing shall be put out

Churchwardens, &c. with consent of parishioners, may contract for the employing and maintaining the poor.

of the book or books, where the names of the persons, who ought to receive collection in the said parish, town, township, or place, are to be registered, and shall not be intitled to ask or receive collection or relief from the churchwardens and overseers of the poor of the same parish, town, or township; and where any parish, town, or township shall be too small to purchase or hire such house or houses for the poor of their own parish only, it shall and may be lawful for two or more such parishes, towns, or townships, or places, with the consent of the major part of the parishioners or inhabitants of their respective parishes, town, township, or places, in vestry, or other parish, or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any Justice of Peace dwelling in or near any such parish, town, or place, signified under his hand and seal, to unite in purchasing, hiring, or taking such house, for the lodging, keeping, and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes so uniting, and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained, and employed; and that if any poor person or persons in the respective parishes, townships, or places so uniting, shall refuse to be lodged, kept, and maintained in the house hired or taken for such uniting parishes, townships, or places, he, she, or they so refusing, shall be put out of the collection book, where his, her, or their names were registered, and shall not be intitled to ask or demand relief or collection from the churchwardens and overseers of the poor in their respective parishes, townships, or places; and that it shall and may be lawful for the churchwardens and overseers of the poor of any parish, township, or place, with the consent of the major part of the parishioners or inhabitants of the said parish, township or place, where such house or houses is, are, or shall be purchased or hired for the purposes aforesaid, in vestry, or other parish or publick meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to contract with the churchwardens and overseers of the poor of any other parish, township, or place, for the lodging, maintaining, or employing of any poor person

Poor persons refusing such provisions, to have no relief.

person or persons of such other parish, township, or place, as to them shall seem meet; and in case any poor person or persons of such other parish, township, or place, shall refuse to be lodged, maintained, and employed in such house or houses, he, she, or they so refusing, shall be put out of the collection book of such other parish, township, or place, where his, her, or their names were registered, and shall not be intitled to ask, demand, or receive any relief or collection from the churchwardens and overseers of the poor of his, her, or their respective parish, township, or place: Provided always, That no poor person or persons, his, her, or their apprentice, child, or children, shall acquire a settlement in the parish, town, or place, to which he, she, or they are removed by virtue of this act; but that his, her, or their settlement shall be and remain in such parish, town, or place, as it was before such removal; any thing in this act to the contrary notwithstanding.

Provide,

§ V. And be it further enacted by the authority aforesaid, That from and after the twenty-fifth day of March, which shall be in the year of our Lord one thousand seven hundred and twenty-three, no person or persons shall be deemed, adjudged, or taken to acquire or gain any settlement in any parish or place, for or by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of thirty pounds, and *vide* paid, for any longer or further time, than such person or persons shall inhabit in such estate, and shall then be liable to be removed to such parish or place, where such person or persons were last legally settled, before the said purchase and inhabitancy therein.

Purchasers under 30l. not intitled to settlement in a parish;

§ VI. And be it further enacted by the authority aforesaid, That no person or persons whatsoever, who from and after the twenty-fifth day of March in the year of our Lord one thousand seven hundred and twenty-three, shall be taxed, rated, or assessed to the scavenger, or repairs of the highway, and shall duly pay the same, shall be deemed or taken to have any legal settlement in any city, parish, town, or hamlet, for or by reason of his, her, or their paying to such scavengers rate, or repairs of the highways, as aforesaid; any law to the contrary in anywise notwithstanding.

no payment of scavengers rates.

8 & 9 W. 3.
c. 30.

Justices of St.
Peter and Nassa-
borough may de-
termine appeals
as formerly.

No appeals from
orders of re-
moval to be de-
termined with-
out reasonable
notice to the ap-
pellants.

§ VII. And whereas there was a clause in the Statute made in the eighth and ninth year of His late Majesty King William the third, intitled, *An Act for the supplying some defects in the law for the relief of the poor of this kingdom*, whereby it was enacted, That after the first day of May one thousand six hundred ninety-seven, all appeals against any order for the removing of any poor persons, should be heard at the quarter sessions of the county or division, wherein the parish or place from whence such person should be removed doth lie, and not elsewhere, except the liberty of St. Albans; be it enacted by the authority aforesaid, That it shall and may be lawful for the Justices of the Peace within the liberty of the borough of St. Peter, and hundred of Nasseborough, in the county of Northampton, to hear and determine all appeals to them made against any order made for removal of any poor person, in their quarter sessions, as they might have done before the making of the said last mentioned act; any thing therein or in this present act contained to the contrary thereof, in anywise notwithstanding.

§ VIII. And whereas several disputes and controversies have arisen and been concerning the time of notice to be given of appeals from orders of removals of poor persons; to prevent the same as much as may be for the future, be it enacted by the authority aforesaid, That from and after the said twenty-fifth day of March one thousand seven hundred and twenty-three, no appeal or appeals from any order or orders of removal of any poor person or persons whatsoever, from any parish or place to another, shall be proceeded upon in any court or quarter sessions, unless reasonable notice be given by the churchwardens or overseers of the poor of such parish or place, who shall make such appeal, unto the churchwardens or overseers of the poor of such parish or place, from which such poor person or persons shall be removed; the reasonableness of which notice shall be determined by the Justices of the Peace at the quarter sessions, to which the appeal is made; and if it shall appear to them that reasonable time of notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same.

§ IX. And for the preventing of vexatious removals, be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and twenty-three, if the Justices of the Peace shall, at their quarter sessions, upon an appeal before them there had concerning the settlement of any poor person determining in favour of the appellant, that such poor person or persons was or were unduly removed, that then the said Justices shall, at the same quarter sessions, order and award to such appellant so much money, as shall appear to the said Justices to have been reasonably paid by the parish or other place, on whose behalf such appeal was made, for or towards the relief of such poor person or persons, between the time of such undue removal, and the determination of such appeal; the said money so awarded to be recovered in the same manner, as costs and charges upon an appeal are prescribed to be recovered by the said statute made in the ninth year of His late Majesty King William the third, intituled, *An act for supplying some defects in the laws for the relief of the poor of this kingdom.*

When appeals shall be determined in favour of the appellant, reasonable charges to be allowed.

Anno 3 Georgii 2. Regis, cap. 29.

An Act for continuing, &c. and for making further Provision concerning Certificates relating to the Settlements of poor Persons, and the Charges of maintaining and removing certificated Persons.

§ VIII. **A**ND to prevent disputes, which often happen, touching the probt of certificates given by the officers of any parish or place, acknowledging any person or persons, therein named to be an inhabitant or inhabitants legally settled in such parish, town, or place, by virtue of an act of parliament made in the eighth and ninth years of the reign of His late Majesty King William the third, and for making such certificates more effectual; be it enacted

Witnesses to certificates of settlements to swear that they saw the churchwardens, &c. sign them.

by the authority aforesaid. That from and after the twenty-fourth day of *June* in the year of our Lord one thousand seven hundred and thirty, the witnesses, who attest the execution of such certificates by the churchwarden or churchwardens, overseer or overseers, signing and sealing the same, or one of the said witnesses, shall make oath before the Justices of the Peace, who by the said act are directed to allow the same (which oath they are hereby authorized to administer) that such witness or witnesses did see the churchwarden or churchwardens, overseer or overseers, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses attesting the said certificate are of their own proper handwriting; which said Justices of the Peace shall also certify that such oath was made before them; and every such certificate so allowed, and oath of the execution thereof so certified by the said Justices of the Peace, shall be taken and deemed, and allowed in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof; and that all certificates given in pursuance of the said act, before the said twenty-fourth day of *June*, one thousand seven hundred and thirty, shall be also taken and allowed in all courts as evidence, without other proof; provided the same are duly allowed by two Justices of the Peace, as by the said act is required.

§ IX. And whereas by an act made in the eighth and ninth years of the reign of His late Majesty King *William* the third, intituled, *An act for the supplying some defects in the laws for the relief of the poor of this kingdom*, all parishes and places are obliged to receive and entertain as inhabitants all and every person and persons, and their families, which come from any other parishes or places with such certificates of their settlement, as in the said act are directed and required, until such certificate persons become chargeable, in which case, and no others, the parishes and places, to which they have been sent by certificate, are authorized to re-convey and those from whence they came required to receive the said certificate persons, and their families, as their proper parishioners and inhabitants; but no provision is made in the said act for re-imbursing the parishes and places the charges they may be put to in re-conveying the said certificate persons to their former parishes and settlements, or for the maintenance of them, when sick or disabled, till they may be

be in a condition to be so removed, whereby divers parishes and places are often put to great and unavoidable expences in removing and maintaining such certificate persons, and their families: Now to remedy and prevent the same for the future, be it enacted by the authority aforesaid, That when any overseer or overseers of poor of any parish or place, or other person, shall remove back any person or persons, or their families, residing in such parish or place, or sent thither by certificate, and becoming chargeable, as aforesaid to the parish or place to which such person or persons shall belong, such overseers, or other persons, shall be reimbursed such reasonable charges as they may have been put unto in maintaining and removing such person or persons, by the churchwardens or overseers of the poor of the parish or place to which such person or persons is or are removed; the said charges being first ascertained and allowed of by one or more of His Majesty's Justices of the Peace for the county or place to which such removal shall be made; which said charges so ascertained and allowed shall, in case of refusal of payment, be levied by distress and sale of the goods and chattels of the churchwardens and overseers of the poor of the parish or place to which such certificate person or persons is or are removed, by warrant or warrants under the hand and seal, or hands and seals of such Justice or Justices, returning the overplus, if any there be, which warrant or warrants be or they are hereby required to grant.

Overseers to be
reimbursed on re-
conveying certi-
ficate persons.

Anno 5 Georgii 2. Regis, cap. 19.

An Act to oblige the Justices of the Peace at their general or quarter Sessions to determine Appeals made to them according to the Merits of the Case, notwithstanding Defects of Form in the original Proceedings; and to oblige Persons suing forth Writs of *Certiorari* to remove Orders made on such Appeals into his Majesty's Court of King's Bench, to give Security to prosecute the same with effect.

Preamble.

WHEREAS in many cases, where His Majesty's Justices of the Peace by law are impowered to give or make judgments or orders, great expences have been occasioned by reason that such judgments or orders have, on appeals to the Justices of the Peace at their respective general or quarter sessions, been quashed or set aside upon exceptions or objections to the form or form of the proceedings, without hearing or examining the truth and merits of the matter in question between parties concerned: Therefore to prevent the same for the future, may it please your most excellent Majesty, that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That after the twenty-fourth day of June one thousand seven hundred and thirty-two, upon all appeals to be made to the Justice, of the Peace at their respective general or quarter sessions to be holden for any county, riding, city, liberty, or precinct, within that part of Great Britain called England, against judgments or orders given or made by any justices of the peace as aforesaid, such Justices so assembled at any general or quarter sessions, shall, and they are hereby required from time to time, within their respective jurisdictions, upon all and every such appeals so made to them, to cause any defect or defects of form, that shall be found in any such original

After 24 June 1732. Justices may rectify defects of form on appeals,

original judgments or orders, to be rectified and amended without any cost or charges to the parties concerned, and after such amendment made shall proceed to hear, examine, and consider the truth and merits of all matters concerning such original judgments or orders; and likewise to examine all witnesses upon oath, and hear all other proofs relating thereto, and to make such determinations thereupon, as by law they should or ought to have done, in case there had not been such defect or want of form in the original proceeding; any law, usage, or custom to the contrary notwithstanding.

And whereas divers writs of *Certiorari* have been procured to remove such judgments or orders into his Majesty's Court of King's Bench at *Westminster*, in hopes thereby to discourage and weary out the parties concerned in such judgments or orders by great delays and expences: Be it therefore enacted by the authority aforesaid, That no *Certiorari* shall be allowed to remove any such judgment or order, unless the party or parties prosecuting such *Certiorari*, before the allowance thereof, shall enter into a recognizance, with sufficient sureties, before one or more Justices of the Peace of the county or place, or before the Justice at their general quarter sessions, or general sessions where such judgment or order shall have been given or made, or before any one of His Majesty's Justices of the said Court of King's Bench, in the sum of fifty pounds, with condition to prosecute the same at his or their own costs and charges with effect, without any wilful or affected delay, and to pay the party or parties, in whose favour and for whose benefit such judgment or order was given or made, within one month after the said judgment or order shall be confirmed, their full costs and charges to be taxed according to the course of the court, where such judgments or orders shall be confirmed; and in case the party or parties prosecuting such *Certiorari*, shall not enter into such recognizance, or shall not perform the conditions aforesaid, it shall and may be lawful for the said Justices to proceed and make such further order or orders for the benefit of the party or parties, for whom such judgment shall be given, in such manner, as if no *Certiorari* had been granted.

And it is hereby further enacted by the authority aforesaid, that the recognizance and recognizances, to be taken as aforesaid, shall be certified into the Court of King's Bench at *Westminster*, and there filed with the

and may proceed to determine them.

No *Certiorari* to be allowed to remove Justices orders, without a recognizance of 50*l.* to prosecute to effect.

On refusal of recognizance Justices to proceed.

Recognizances to be certified into the King's Bench.

Attachment for
contempt.

Certiorari and order, or judgment removed thereby; and if the said order or judgment shall be confirmed by the said court, the persons intitled to such costs, for the recovery hereof, within ten days after demand made, of the person or persons who ought to pay the said costs, upon oath made of the making such demand and refusal of payment thereof, shall have an attachment granted against him or them by the said court for such contempt, and the said recognizance so given, upon the allowing of such *Certiorari*, shall not be discharged until the costs shall be paid, and the order so confirmed shall be complied with and obeyed.

Anno 6 Georgii 2. cap. 31.

An Act for the Relief of Parishes, and other Places, from such Charges as may arise from Bastard Children born within the same.

Preamble.

After 24 June 1733, the person charged on oath of being the father of a bastard child,

WHEREAS the laws now in being are not sufficient to provide for the securing and indemnifying parishes, and other places from the great charges frequently arising from children begotten and born out of lawful matrimony: For remedy thereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty fourth day of June in the year of our Lord one thousand seven hundred and thirty-three, if any single woman shall be delivered of a bastard child, which shall be chargeable, or likely to become chargeable, to any parish or extraparochial place, or shall declare herself to be with child, and that such child is likely to be born a bastard, and to be chargeable to any parish or extraparochial place, and shall, in either of such cases, in an examination to be taken in writing, upon oath, before any one or more Justice or Justices of the Peace of any county, riding, division, city, liberty, or town corporate, wherein such parish or place shall lie, charge any person with having gotten her with child, it shall and may be lawful to and for such Justice or Justices, upon application made to him or them by the overseers of the poor of such parish, or by any other of them, or by any substantial householder of such extraparochial place, to issue

issue out his or their warrant or warrants for the immediate apprehending such person, so charged as aforesaid, and for bringing him before such Justice or Justices, or before any other of his Majesty's Justices of the Peace of such county, riding, division, city, liberty or town corporate, and the Justice or Justices, before whom such person shall be brought, is and are hereby authorized and required to commit the person so charged, as aforesaid to the common gaol or house of correction of such county, riding, division, city, liberty, or town corporate, unless he shall give security to indemnify such parish or place, or shall enter into a recognizance, with sufficient surety upon condition to appear at the next general quarter sessions, or general sessions of the Peace to be holden for such county, riding, division, city, liberty, or town corporate, and to abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony.

§ II. Provided nevertheless, and be enacted by the authority aforesaid, That if the woman so charging any person as aforesaid, shall happen to die, or be married, before she shall be delivered, or if she shall miscarry of such child, or shall appear not to have been with child at the time of her examination, then, and in any of the said cases, such person shall be discharged from his recognizance at the next general quarter sessions or general sessions of the peace, to be holden for such county, riding, division, city, liberty, or town corporate, or immediately released out of custody, by warrant under the hand and seal or hands and seals, of any one or more Justice or Justices of the Peace, residing in or near the limits where such parish or place shall lie.

§ III. Provided also, and be it enacted by the authority aforesaid, That upon application made by any person who shall be committed to any gaol or house of correction by virtue of this act, or by any person on his behalf, to any justice or justices residing in or near the limits where such parish or place shall lie, such Justice or Justices is and are hereby authorized and required to summon the overseer or overseers of the poor of such parish, or one or more of the substantial householders of such extraparochial place, to appear before him or them, at a time and place to be mentioned in such summons, to shew cause why such person should not be discharged;

and

and if no order
be made within
6 weeks after
the woman's
delivery, prisoner
to be set at
liberty.

The woman not
to be examined
relating to her
pregnancy, till
one month after
her delivery.

and if no order shall appear to have been made in pursu-
ance of the said act of the eighteenth year of the reign of
her late majesty queen Elizabeth, within six weeks after
such woman shall have been delivered, such Justice or Jus-
tices shall and may discharge him from his imprisonment
in such gaol or house of correction, to which he shall
have been committed.

§ IV. Provided always, and be it further enacted by
the authority aforesaid, That it shall not be lawful for
any Justice or Justices of the Peace to send for any wo-
man whatsoever, before she shall be delivered, and one
month after, in order to her being examined concerning
her pregnancy, or supposed pregnancy, or to compel any
woman before she shall be delivered to answer to any
questions relating to her pregnancy, any law, usage, nor
custom, to the contrary notwithstanding.

Anno 16 Georgii 2. cap. 18.

An Act to empower Justices of the Peace to act
in certain Cases, relating to Parishes and
Places, to the Rates and Taxes of which they
are rated or chargeable.

Preamble.

Justices may en-
force the laws
relating to parish
taxes, &c. tho'
they are charge-
able themselves.

WHEREAS doubts have arisen, whether accor-
ding to the laws and statutes now in force, his
Majesty's Justices of the Peace may lawfully act in any
case relating to the parishes or places to the rates and
taxes of which such Justices respectively are rated or
chargeable: May it please your Majesty that it may be
enacted, and be it enacted, by the King's most excellent
Majesty, by and with the advice and consent of the Lords
Spiritual and Temporal, and Commons, in this present
parliament assembled, and by the authority of the same,
That it shall and may be lawful to and for all and every
Justice or Justices of the Peace for any county, riding,
city, liberty, franchise, borough or town corporate with-
in their respective jurisdictions, to make, do, and exe-
cute all and every act or acts, matter or matters, thing
or things appertaining to their office as Justice or Justices
of the Peace, so far as the same relates to the laws for
the

the relief, maintenance, and settlement of poor persons; for passing and punishing vagrants; for repair of the highways, or to any other laws concerning parochial taxes levies, or rates, notwithstanding any such Justice or Justices of the Peace is or are rated to or chargeable with the taxes, levies or rates within any such parish, township, or place affected by any such act or acts of such Justice or Justices as aforesaid.

§ II. And be it farther enacted by the authority aforesaid, That no act or acts, matter or matters, thing or things which hath or have been before the making of this act, done, made, or executed by any such Justice or Justices of the peace, shall hereafter be quashed or declared void, because the same hath or have been so made, done, or executed by any such Justice or Justices, so rated or chargeable as aforesaid, any law, usage, or custom whatsoever to the contrary notwithstanding.

No acts of justices heretofore done, shall be made void, because themselves are rated.

§ Provided always, and be it further enacted by the authority aforesaid, That this act or any thing therein contained, shall not authorize or empower any Justice or Justices of the peace for any county or riding at large, to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place, where such Justice or Justices of the peace is or are so charged, taxed, or chargeable as aforesaid; any thing herein contained to the contrary in anywise notwithstanding.

Provido.

Anno 17 Georgii 2. cap. 3.

An Act to oblige Overseers of the Poor to give publick Notice of Rates made for the Relief of the Poor, and to produce the same.

WHEREAS great inconveniences do often arise in cities, towns corporate, parishes, townships, and places, by reason of the unlimited power of the churchwardens and overseers of the poor, who frequently on frivolous pretences, and for private ends, make unjust and

Preamble, reciting the act 43 Elis. c. 2.

and illegal rates in a secret and clandestine manner, contrary to the true intent and meaning of a statute made in the forty and third year of the reign of Queen Elizabeth, intituled, *An act for the better relief of the poor*: For remedy whereof, and preventing the like abuses for the future, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of May, which shall be in the year of our Lord one thousand seven hundred and forty-four, the churchwardens and overseers or other persons authorized to take care of the poor in every parish, township, or place, shall give, or cause to be given, publick notice in the church, of every rate for the relief of the poor, allowed by the Justices of Peace, the next Sunday after the same shall have been so allowed; and that no rate shall be esteemed or reputed valid and sufficient, so as to collect and raise the same, unless such notice shall have been given.

§ II. And be it further enacted, That the churchwardens and overseers of the poor, or other persons, authorized as aforesaid, in every parish, township, or place shall permit all and every the inhabitants of the said parish, township, or place, to inspect every such rate at all seasonable times, paying one shilling for the same; and shall upon demand forthwith give copies of the same, or any part thereof to any inhabitant of the said parish, township, or place, paying at the rate of sixpence for every twenty-four names.

The rates to be published in the church.

The rates to be inspected by any inhabitant, and copies taken.

Penalty on not permitting any inhabitant to inspect, &c.

§ III. And be it further enacted, that if any churchwarden or overseer of the poor, or other person, authorized as aforesaid, shall not admit any inhabitant or parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof as aforesaid, such churchwarden, or overseer, or other person, authorized as aforesaid, for every such offence shall forfeit and pay to the party aggrieved the sum of twenty pounds, to be sued for and recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record, wherein no essoin, protection, or wager of law, or more than one imparlance shall be allowed.

38
Anno 17 Georgii 2. c. 38.

An Act for remedying some Defects in the Act made in the forty-third Year of the Reign of Queen Elizabeth, intituled *An Act for the Relief of the Poor.*

I. WHEREAS by reason of some defects in an Act of parliament made in the three and fortieth year of the reign of the late Queen Elizabeth, intituled, *An Act for the relief of the poor*, the money raised for that purpose is liable to be misapplied, and there is often great difficulty and delay in raising of the same, for remedy whereof may it please your most Excellent Majesty That it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June one thousand seven hundred and forty-four, the churchwardens and overseers of the poor shall yearly, and every year within fourteen days after other overseers shall be nominated and appointed to succeed them, deliver in to such succeeding overseers a just, true, and perfect account in writing, fairly entered in a book or books to be kept for that purpose, and signed by the said churchwardens and overseers hereby directed to account as aforesaid, under their hands, of all sums of money by them received, or rated and assessed, and not received; and also of all goods, chattels, stocks, and materials that shall be in their hands, or in the hands of any of the poor, in order to be wrought, and of all monies paid by such churchwardens and overseers so accounting, and of all other things concerning the said office; and shall also pay and deliver over all sums of money, goods, chattels, and other things, as shall be in their hands, unto such succeeding overseers of the poor; which said account shall be verified by oath, or by the affirmation of persons called *Quakers*, before one or more of his Majesty's Justices of the Peace; which said oath or affirmation such Justice or Justices is and are hereby authorized

Preamble, reciting the act 43 Eliz.

At what time parish officers shall make up their accounts.

Book may be inspected, paying 6 d.

and copies taken, paying 6 d. for 300 words.

Penalty on parish officers not accounting as this act directs.

On an overseer's dying, &c. Two justices to choose another.

Overseer removing, shall deliver his accounts to the churchwarden.

Executors of overseers to account in 40 days.

thorised and required to administer, and to sign and attest the caption of the same, at the foot of the said account, without fee or reward; and the said book or books shall be carefully preserved by the churchwardens and overseers, or one of them, in some publick or other place in every parish, township, or place; and they shall and are hereby required to permit any person there assessed, or liable to be assessed, to inspect the same, at all seasonable times, paying six pence for such inspection; and shall, upon demand, forthwith give copies of the same, or any part thereof, to such person paying at the rate of six pence for every three hundred words, and so in proportion for any greater or less number.

§ II. And it is hereby further enacted, That in case such churchwardens and overseers of the poor or any of them, shall refuse or neglect to make and yield up such account, verified as aforesaid, within the time herein before limited or appointed, or shall refuse or neglect to pay and deliver over such sum or sums of money, goods, chattels, and other things in their hands, as by this act is directed; in either of the said cases it shall and may be lawful to and for any two or more Justices of the Peace to commit him or them to the common gaol, until he or they shall have given such account, or shall have paid and yielded up such monies, goods, chattels, and other things in their hands as aforesaid.

§ III. And be it further enacted by the authority aforesaid, That if any such overseer shall die or remove from the place for which he was appointed, or become insolvent, before the expiration of his office, on oath thereof made, it shall be lawful for two Justices of the Peace to appoint another overseer in his stead, who shall continue in office until new overseers are appointed; and if any overseer shall remove as aforesaid, he shall before such removal deliver over to some churchwarden, or other overseer of the same place, his accounts verified as aforesaid, with all rates, assessments, books, papers, sums of money, and other things concerning his office, under the like penalties as are inflicted by this act on an overseer refusing to do the same, after the expiration of his office; and if any overseer shall die as aforesaid, his executors or administrators shall within forty days after his decease, deliver over all things concerning his office to some churchwarden, or other overseer of the same place; and shall pay out of the

the assets left by such overseer, all sums of money remaining due, which he received by virtue of his said office, before any of his other debts are paid and satisfied.

§ IV. And be it further enacted, That in case any person or persons shall find him, her, or themselves aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put on, or left out of such rate or assignment, or to the sum charged on any person or persons therein, or shall have any material objection to such account as aforesaid, or any part thereof, or shall find him, her, or themselves aggrieved by any neglect, act, or thing done or omitted by the churchwardens and overseers of the poor, or by any of his Majesty's Justices of the Peace; it shall and may be lawful for such person or persons, in any of the cases aforesaid, giving reasonable notice to the churchwardens or overseers of the poor of the parish, township, or place to appeal to the next general or quarter sessions of the peace for the county, riding, division, corporation, or franchise, where such parish, township, or place lies; and the Justices of the Peace there assembled, are hereby authorized and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said Justices, that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same; and the said Justices may award and order to the party for whom such appeal shall be determined, reasonable costs, in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons, by an act made in the eight and ninth years of King William the third, intituled, *An act for supplying some defects in the laws for the relief of the poor of this kingdom*.

Persons aggrieved may appeal to quarter sessions.

§ V. Provided always, That in all corporations or franchises, who have not four Justices of the peace, it shall and may be lawful for any person or persons, in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace, for the county, riding, or division, wherein such corporation or franchise is situate.

Proviso for Corporations, &c.

§ VI. And whereas it hath been held, that upon appeals from rates and assessments, the Justices of the Peace

How far Justices
shall give relief
on appeals.

may not only quash the old rates, but make new rates, and assignments, from which no appeal can be had; be it enacted by the authority aforesaid, That upon all appeals from rates and assessments, the Justices of the Peace (where they shall see just cause to give relief) shall and are hereby required to amend the same in such manner only as shall be necessary for giving such relief, without altering such rates or assessments, with respect to other persons mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to quash or set aside the same, then, and in every such case, the said Justices shall, and are hereby required to order and direct the churchwardens and overseers of the poor to make a new equal rate or assessment, and they are hereby required to make the same accordingly.

Clause relating
to warrants of
distress.

§ VII. And for the more effectual levying money assessed for the relief of the poor, be it enacted by the authority aforesaid, That the goods of any person assessed and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county or precinct, on oath made thereof before some Justice of any other county or precinct (which oath shall be certified under the hand of such Justice on the said warrant) such goods may be levied in such other county or precinct by virtue of such warrant and certificate; and if any person shall find her or himself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the Peace for the county or precinct where such assessment was made; and the Justices there are hereby required to hear and finally determine the same.

Appeal to
Quarter sessions.

Clause to prevent vexatious
actions against
overseers.

§ VIII. And to prevent all vexatious actions against overseers of the poor, be it enacted by the authority aforesaid; That where any distress shall be made for any sum or sums of money, justly due for the relief of the poor, the distress itself shall not be deemed to be unlawful, nor the party or parties making it to be deemed a trespasser or trespassers, on account of any defect, or want of form in the warrant for the appointment of such overseers, or in the rate or assessment, or in the warrant of distress thereupon; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab in-*

itis,

itis, on account of any irregularity, which shall be afterwards done by the party or parties distraining; but the party or parties aggrieved by such irregularity shall or may recover full satisfaction for the special damage he, she or they shall have sustained thereby, and no more, in an action of trespass, or on the case, at the election of the plaintiff or plaintiffs.

§ IX. Provided always, That where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, or their full costs of suit, and have all the like remedies for the same as in the other cases of costs. Plaintiffs recovering to have full costs.

X. X. Provided nevertheless, That no plaintiff or plaintiffs shall recover in any action for any such irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, before such action brought. Proviso in case of irregularity.

§ XI. And be it further enacted by the authority aforesaid, That in case any person or persons shall refuse or neglect to pay to such overseers as aforesaid any sum or sums of money that he, she, or they shall be legally rated or assessed to, it shall and may be lawful to and for the succeeding overseers, and they are hereby required, to levy such arrears, and out of the money so levied to reimburse their predecessors all sums of money which they have expended for the use of the poor, and which are allowed to be due to them in their accounts, as aforesaid. Succeeding overseers to levy arrears, to reimburse the former.

§ XII. And whereas persons frequently remove out of parishes and places, without paying the rates assessed on them, and other persons do enter and occupy their houses or tenements part of the year, by reason whereof great sums are annually lost to such parishes and places; be it therefore enacted by the authority aforesaid, That where any person or persons shall come into, or occupy any house, land, tenement, or hereditament or other premises out of, or from which any other person assessed shall be removed, or which at the time of making such rate, was empty or unoccupied, that then every person so removing from, and every person so coming into or occupying the same, shall be liable to pay such rate, in proportion to the time that such person occupied the same respectively, in the same manner, and under the like penalty of distress, as if such person so removing had not removed, or such person so coming in or occupying had been originally rated and assessed in such rate; which said

proportion, in case of dispute, shall be ascertained by any two or more of his Majesty's Justices of the Peace.

Copies of rates
to be entered in
a book,

§ XIII. And be it further enacted by the authority aforesaid, That true and just copies of all rates and assessments, hereafter to be made for the relief of the poor, be fairly wrote and entered in a book or books, to be provided for that purpose by the churchwardens and overseers of the poor of every parish, township, or place, who shall take care that such copies be wrote and entered accordingly, within fourteen days after all appeals from such rates are determined, and shall attest the same by putting their names thereto; and all and every such book or books shall be carefully preserved by the churchwardens and overseers of the poor for the time being, or one of them, in some publick or other place, in every such parish, township, or place, whereto all persons assessed, or liable to be assessed, may freely resort, and shall be delivered over from time to time to the new and succeeding churchwardens and overseers of the poor, as soon as they enter into their said offices, to be preserved as aforesaid, and shall be produced by them at the general or quarter sessions, when any appeal is to be heard or determined.

to be kept for
publick perusal.

Penalty on pa-
rish officers not
obeying this act.

§ XIV. And be it further enacted by the authority aforesaid, That if any churchwarden, overseer of the poor, or other officer of any parish, township, or place, shall neglect or refuse to obey and perform the several orders and directions of this act, or any of them, where no penalty is before provided by this act, or shall act contrary thereto; every such churchwarden, overseer of the poor, or other officer so offending in the premisses, shall, for every such offence, on oath thereof made, within two calendar months after the offence committed, before any two or more of his majesty's Justices of the Peace, forfeit, for the use of the poor of such parish, township, or place, a sum not exceeding five pounds, nor less than twenty shillings, to be levied by distress and sale of the offender's goods, by warrant from such Justices; which sum shall be paid to some churchwarden or overseer of the poor of such parish, township, or place, for the purpose aforesaid.

Power of over-
seers, where
there are no
churchwardens.

§ XV. And be it further enacted by the authority aforesaid, That overseers of the poor within every township or place where there are no churchwardens, shall from time to time do, perform and execute all and every the acts, powers, and authorities concerning the relief of, and

and other matters and things relating to the poor, as churchwardens and overseers of the poor may do, perform, and execute by this act, or any former statute concerning the poor, and shall lose, forfeit, and suffer all pains and penalties for neglect, abuse, or nonperformance thereof, as churchwardens and overseers of poor are liable to, by virtue of this or by any former statute concerning the poor.

Anno 26 Georgii 2. cap. 27.

An Act to confirm certain Acts and Orders made by Justices of the Peace being of the Quorum, notwithstanding any Defect in not expressing therein, that such Justices of the Peace are of the Quorum.

WHEREAS authority is given by divers acts of Parliament, to two or more Justices of the Peace, whereof one or more are to be of the quorum: And whereas divers acts, orders, adjudications, warrants, confirmations of indentures, and other instruments done, made and executed, by two or more Justices of the Peace, without expressing that they are, or that one of them is, of the Quorum, have been, and may be, for that reason only impeached, set aside and vacated; be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That No act or order from and after the twenty-fourth day of June in the year one thousand seven hundred and fifty-three, no act, order, adjudication, warrant, indenture of apprenticeship, or other instrument, already made, done, or executed, or hereafter to be made, done, or executed, by two or more Justices of the Peace, which doth not express that one or more of the Justices is or are of the Quorum, shall be impeached, set aside, or vacated, for that defect only; any law, statute, or usage, to the contrary notwithstanding.

Anno 31 Georgii 2. Regis.

An Act to amend an Act made in the third Year of the Reign of King *William* and Queen *Mary*, intituled, *An Act for the better Explanation, and supplying the Defects of the former Laws for the Settlement of the Poor*, so far as the same relates to Apprentices gaining a Settlement by Indenture; and also to empower Justices of the Peace to determine Differences between Masters and Mistresses and their Servants in Husbandry, touching their Wages, though such Servants are hired for less Time than a Year.

Preamble.

WHEREAS by an act made in the third year of the reign of King *William* and Queen *Mary*, intituled, *An Act for the better explanation, and supplying the defects of the former laws for the settlement of the poor*, it is enacted, that if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement: And whereas since the making the said act, great numbers of persons have been unwarily bound apprentices by certain deeds, writings, or contracts, not indented, by which binding many of them have suffered great loss and damage, on account of their having been refused a settlement in such town or parish, where they have been so bound and resided forty days, and have been removed to the parish or place where their last legal settlement was before such apprenticeship, where they have had no encouragement to exercise their trades, or opportunity to gain a livelihood by their said trades to which they were so bound apprentices: For relief therefore of such apprentices, and for preventing the like mischief for the future; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this pre-

present parliament assembled, and by the authority of the same, That no person who shall have been bound an apprentice, or who shall hereafter be bound an apprentice, by any deed, writing, or contract, not indented, being first legally stamped, shall be liable to be removed from the town, parish, or place, where he or she shall have been so bound an apprentice, and resident forty days, by virtue of any order of removal, granted by two Justices of the peace, of any county, riding, division, city, borough, town corporate, or place; or by virtue of any order of the Justices at their general or quarter sessions, by reason or on account of such deed, writing, or contract, not being indented only.

Provided nevertheless, that nothing herein before enacted, shall extend, or be construed to extend, to set aside or make void any judgment, order, or decree, which shall have been made as aforesaid, before the first day of May one thousand seven hundred and fifty eight.

And whereas by an act passed in the twentieth year of his present Majesty's reign, intituled, *An act for the better adjusting and more easy recovery of the wages of certain servants, and for the better regulation of such servants, and of certain apprentices*; it is enacted, That from and after the twenty-fifth day of March one thousand seven hundred and forty-seven, all complaints, differences, and disputes, which shall arise between masters or mistresses, and servants in husbandry, who shall be hired for one year or longer, or which shall happen or arise between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers, employed for any certain time, or in any other manner, shall be heard, or determined by one or more Justice or Justices of the Peace, for the place where such master or mistress shall inhabit: And whereas doubts have arisen whether the words any labourers employed for any certain time, or in any other manner, extend to servants in husbandry hired for a less time than one year; for obviating the said doubts, be it enacted by the authority aforesaid, That the said act, and all and every clause and matter therein contained, shall from and after the said first day of May one thousand seven hundred and fifty eight, be deemed and construed to extend to all servants employed in husbandry, though hired for a less time than one year; any thing in the said recited act of the twentieth year of his present Majesty's reign, or any other act contained to the contrary notwithstanding.

Person bound apprentice by deed, &c. though not indented, being first duly stamped, is intituled to a settlement where apprenticed.

Judgment, &c. to the contrary made before 1 May 1758, not to be avoided hereby.

Act. 20. Geo. 2.

Recited act extended to servants employed in husbandry, though hired for a less time than a year.

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10

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A C O L.

COLLECTION

CASES, &c.

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Overseers of the Poor.

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Of and for what Place to be appointed,
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pointing them, *pl. 24.* See 43 *Eliz. c. 2.*

1. **R**EX v. Inhabitants of St. George's, T. 9. G. *Part. 120.* The nomination of overseers of the poor, was, that such by name, were appointed to set the poor to work, &c. mentioning the several duties in the act, but did not in express words appoint them overseers; and for that reason this nomination was quashed. Must be appointed overseers in express terms.

2. **R.** v. Great Marlow, T. 13 G. *Foley 5.* Two Justices in Easter week appoint A. and B. overseers of the poor of the town of Great Marlow. On appeal to the sessions, suggesting that C. had a majority of the parishioners, the sessions appoints B. and C. overseers. It was now objected that the appointment of the sessions did not mention, that they were substantial householders; * Substantial householders.

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and that the Justices at sessions could make no new appointment, there being one before by two Justices of the Peace. The Court thought the appointment of the sessions to be bad on both accounts, and ordered it to be quashed. Two exceptions were then taken to the order of Justices, first, that it was an appointment for a town, and not for a parish; but was not allowed; and 2dly, that it was an appointment for one whole year; but the court said it was well enough, and that if they should quash it, no appointment of this kind would stand.

There, or in the parish, and in the body of the order.

3. Case of the overseers of *Wobly*, *M.* 20 G. 2. 2 *Sir.* 1261. Two sets of overseers were appointed, and both quashed; one because the persons appointed were described only as principal inhabitants, instead of pursuing the words of the statute 43 *Eliz.* c. 2, which are *substantial householders*; and the other because it only called them substantial householders, without adding *there or in the parish*, and this too not in the body of the appointment (as it ought to be) but only in the direction at the foot of it. Same resolution, *Rev. v. Morral*, *M.* 7. G. 2. *MSS.*

Who may be appointed Overseers, sec 2 G. 3. c. 20.

Persons occasionally resident ought not to be appointed overseers.

4. *R. v. Moor*, 2 *W. & M. Carth.* 161. The defendant was a citizen of *London*, but resided in the summer at *Hornsey*, and was chosen by the parishioners overseer of that parish. Upon appeal to the sessions he was discharged, but it not appearing upon the order that he was appointed by two Justices (*v.* 43 *Eliz.*) the Court of *B. R.* would not quash the order, because nobody was affected by it. The Court thought such practice of appointing persons only resident for a time, ought to be discouraged, and in *Comm. Digest*, 3 *V.* 84. it is said that such persons ought not to be chosen, and refers to this report of *Carth.* *Vid. Dalton's Justice* 216. c. 73. s. 2.

A woman cannot be appointed overseer.

5. *R. v. Chardstock*, *E.* 10 *An. Vin. Ab.* title *Poor* 415. *Powell* Justice declared, that a woman is not to be an overseer of the poor, and that there can be no custom to put her in because of her being an housekeeper, because it is an officer created by act of parliament. *Parker* Chief Justice said, The Justices had done well in refusing to nominate a woman, and directed application to be made to the Justices to nominate another person, and

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3

and that if they refused, the Court should be moved the next term for a *Mandamus*.

6. *R. v. Gayer, H. 30 G. 2. Burr. 245.* *Gayer* being appointed overseer of the poor, appealed to the sessions, who made the following order. It appearing unto this court, that *Gayer* was and is an acting Justice of the Peace for the county, and also a lieutenant of Marines on halfpay, and that there are other sufficient and substantial householders within the said parish, this court doth therefore vacate and make void, &c. Lord *Mansfield*. The general question relating to the compatibility of offices, and the power of appointing deputies, is unnecessary to be considered upon the present matter. The sessions on appeal have a right to exercise the same latitude of discretion, in judging who are fit to be nominated overseers as the two Justices had. They have given their opinion that Mr. *Gayer* was not a proper person to be appointed overseer. They are not obliged to give any reason for their opinion, because the legislature has intrusted them on an appeal, with the power or authority of appointing overseers. If the sessions had given no reason, their order had been undoubtedly good; we must have presumed that they acted upon proper grounds: It is true that where the whole reason is set out and is clearly wrong, we may and ought to quash an order manifestly made by mistake; but then the bad reason must appear to have been their only inducement: If there may have been other grounds they should be presumed sufficient; and the order ought not to be set aside, because some of the reasons unnecessarily given appear to be bad. Here the whole reason is not given; they say there were other persons qualified, and supposing Mr. *Gayer* liable to serve the office, they might think him not so proper as many others. It does not appear, that they considered him as exempted, or disqualified from being overseer, and that they vacated the order of Justices on that account, as illegal: The execution of a discretionary power, when it is not necessary to give a reason, ought to be supported, unless the whole reason is set forth, and is manifestly wrong: Order of sessions confirmed.

Quere, can an halfpay officer or a Justice of Peace, be appointed overseer?

Overseers of the Poor.

In what Manner, or by what Instrument.

See Stat. 43 Eliz. c. 2. § 1.

Must be appointed under the hands and seals of two Justices.

7. *R. v. Arnold*, T. 4 G. Str. 101. At *Nisi prius* in *Middlesex* before Pratt Ch. J. Indictment against defendants, for that they being churchwardens, and two others, overseers in making a poor's rate, &c. the Ch. J. held the prosecutor to shew an appointment of the overseers under the hands and seals of two Justices, as the statute requires, and he rejected parole evidence, because, he said, it must be produced, that he might judge whether it was a sufficient appointment; he quoted *Willoughby*, and *Disey* in C. B. where a will entered in the spiritual court books, to be delivered out to the executor was refused to be read, till application and refusal of the executor was proved, and the same in *Sir Edward Seymour's* case as to a deed acquitted.—Defendant acquitted.

By whom, and in what Number to be appointed.

Sessions have not an original jurisdiction to appoint overseers.

8. *R. v. Flag and Chelmerston*, M. 13 G. Fol. 8. An order was made by two Justices of Peace to appoint two persons overseers of the poor of these two villis; they appeal to the sessions, who appoint that these two villis shall choose several overseers for the future, and that they shall collect severally in their villis; and when they have collected, then to distribute those assessments jointly as before; and confirmed the order of Justices. The first order of Justices was now quashed, because it did not mention, that these two were substantial inhabitants or householders, and the order of sessions was quashed, because the sessions had no original jurisdiction to appoint overseers.

See pl. 12.

Part of a parish is within the jurisdiction of a corporation, Qu. who shall appoint, &c.

9. *R. v. Butler* and another, E. 8 G. 3. The parish of the *Holy Trinity* in *Guilford*, lies partly within the jurisdiction of the corporation of *Guilford*, and partly out of it. On *Easter Sunday* 1767, about half past 11 at night, the Mayor of *Guilford*, and one Justice for the county at large, made an appointment of two overseers for this parish. And on *Easter Monday* about noon, two of the aldermen of the corporation, being Justices of the Peace for the corporation, appointed two other persons, the present defendants,

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defendants, to be overseers for the same parish. This last appointment was certified into the *King's Bench*; and the *Solicitor General* moved to quash it; because the Mayor alone had power by 43 *Eliz. c. 2.* and that his appointment, though in fact antecedent, yet, whether antecedent or not, superseded the other appointment; and that its being made on a *Sunday* was no objection to it, (which was allowed by the court.) By the court: Quashing an appointment, where the fault does not appear upon the face of the appointment, is *ex debito justitiæ*. But where the fault does appear upon the face of the appointment, there the party has another remedy by action, and quashing is not *ex debito justitiæ*. Of this last kind is the present appointment, which we will not quash. This is not a proper case in which an appointment may be quashed; the year is over, and the defendants might be ruined by actions. But we have no difficulty upon the principal question. The statute *Eliz.* gives power to Justices in, as well as out of sessions; and therefore cannot apply to the head officer of a corporation only, for he cannot constitute a sessions alone. The expression "Justice or Justices" may mean to comprize the case where there is but one Justice; such a power is dangerous to be trusted in the hands of one person, and was never claimed before. Rule for quashing the appointment discharged.

10. *R. v. Bestand*, 19 *G. 2*, *MSS.* 2, Two Justices made an appointment of the defendant, to be an overseer of the poor of *Westwood Yates*, in the county of *Dorset*; and the appointment was confirmed by the sessions on appeal. It was moved to quash the appointment, and the order confirming it. *Lee*, Ch. J. The objection is, that the Justices here appointed only one single overseer, and not two, according to the 43 *Eliz.* But this is no direction as to the manner of nomination. The question then is, Whether, having appointed one overseer, they have acted within the authority of that statute. It don't appear but there may be another appointment by another order, and the court cannot say they have not appointed another; and if they have only appointed one, you may have a *Mandamus* for them to appoint another. I don't see but this is a good appointment. In *R. v. Hayman*, the court were very tender in overturning that order, and strongly inclined to think that the order was good; and I am certain, there are many parts of the kingdom where a single overseer is appointed. *Denison*

Appointment of
one overseer
only.

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J. Whatever the merits were before the sessions we cannot tell, we must determine as it appears upon the order. There is no law that says, there shall be an appointment of two or more overseers *uno flatu*; it may happen that there is only one substantial householder in a small village, if he is appointed overseer, and another substantial householder comes into the parish afterwards, cannot they appoint him also overseer? Suppose two are appointed overseers, and one of them is not a substantial householder, the court cannot quash the whole appointment, then it will stand as in the appointment of one, which could not be, if an appointment of one was illegal. There is no occasion for the court to give any opinion where the Justices can appoint one overseer only. Both orders were confirmed.

11. *R. v. Harman*, E. 12. G. 2. MSS. 2. Motion to quash an order of Justices of appointment of overseers for the parish of *St. Clements Danes*, and likewise an order of seizure for eleven neglects with respect to the said office, *Hollings* for defendant. The power the Justices have is by the 43 *Eliz.* which says, there shall be four, three, or two persons nominated for overseers. In the present case five have been nominated. The order of seizure sets forth, that defendant was guilty of eleven neglects of the office, and therefore orders 11 *l.* to be levied, pursuant to the act. It does not appear that defendant had notice of the order of appointment, before the order of seizure was made, the summons should have been personally served. 5 *Mod.* 419. By the statute the penalty is 20 *s.* for absents from monthly meetings, or being negligent in their office. Here are eleven neglects charged; but only five of them are for absents from monthly meetings, four more are for absents from other meetings not within the statute; the tenth is, that his maid refused to take the rate book, and the eleventh is, that he refused to take 7 *s.* 3 *d.* for half a year's parish rate. Upon shewing cause why the order of appointment of overseers should not be quashed, Sir *Thomas Abney* argued, that here were three appointments, *viz.* 18th *April*, 24th *April*, and 26th *April*, 1738, by which the Justices nominated *Harman*; and four other persons, for overseers of *St. Clements Danes*; on the *Certiorari* they have received two summonses and a warrant of distress, but the court will not take notice of them, because they ought not to be returned; for the court never quashes processes of the Justices, but only matters of judgment. *Ch.*

J.

Appointment of
five overseers.

Eleven fines for
so many ne-
glects.

§. We cannot take notice of the summons or warrant of distress. *Holling*, In the warrant, there is an adjudication, and the court will take notice of that. Ch. J. The first consideration is the appointment, and the next is, what on one side is called a warrant of distress, and on the other side an order: if it is a warrant of distress, the court cannot take notice of it, as in the case of bail or recognisance; but in my opinion, it appears on the face of it to be an adjudication, and as much so as an order of removal, for they adjudge the party settled, and then there is a warrant for his removal. Now this is a warrant of distress, preceded by an adjudication; for it recites the neglects, and adjudges that he is guilty of them, and then directs the distress. It cannot be determined what is an order, but by the words of adjudication. And taking it as an adjudication, the exception seems to be very strong; for it is, that they adjudge him to be guilty of the neglects after mentioned: The servant's refusing the rate book, and his refusing the rate, without appearing by whom given, and which are some of the neglects of which they adjudge him guilty, are certainly exceptions to this order, and being connected with others in the order, I think, form a strong objection to it. As to the other part of the case, with respect to the order of appointment, I am doubtful whether this now comes before the court, in such a way as for the court to quash it. I think it will be a different consideration if the act of Parliament is to be construed, whether, upon the face of such an order where five are appointed, the court can determine the order void? but I cannot see how it can be called void, as to the four who act. *Drury's case in 4 Co.* is very near this kind of construction. The question was on the act of *Hen. 8.* where a person could retain no more than so many chaplains, but the retainer was held not void *in toto*, but good as to so many as were permitted according to the statute, and void as to the others. But now as we can only take notice of it upon the order, we cannot determine which to strike out, they being all equally nominated, and it differs from the case of *Clerkenwell*; for here the appointment is entire, and relates to all equally, and must be good or void in the whole; but as to the appointment I have some difficulty to determine upon this return, that it is void *in toto*, which we must do, or confirm it *in toto*; but as to the order or warrant of distress, I think the exceptions are very strong; and as they are not defended,

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defended, they will be sufficient to quash that order. *Pags. J.* I think both these objections are well taken, and both the orders should be quashed. I cannot see it is discretionary in the Justices to name above four overseers. The act of parliament beginning with the greatest number, shewed the extent intended; as to saying there are no negative words, there is no occasion for it in a new power; and the affirmative words imply a negative; in the case of chaplains, every man comes in separately, and therefore the retainer may be void as to some; but in this case they appear to be all nominated at once, and it is one act, and they are equally innocent, or equally guilty, and it must be void to the whole, they having exceeded the number of four. Supposing this appointment to be good, the warrant is an order, and the warrant is grounded upon the order which precedes it. As to the usage, I think that if it had been at the time of the act, and cotemporary with it, would have been an exposition, but this is at so great a distance, that I think it cannot prevail. *Ch. J.* I do not lay any stress upon the usage. *Probyn, J.* I don't think it necessary the court should give any opinion upon the appointment, for it may come before the court in a more proper way by indictment, but the only consideration is, as to the fines levied by this warrant of distress. This is an adjudication, for they adjudge the neglect, and direct the distress, and the judgment and execution may be in the same instrument as in orders of removal. Here are eleven penalties for eleven distinct offences, of quite different natures, and they ought to be distinctly levied for each offence; but here they are comprehended in one judgment, and a gross sum directed for the whole. If a man be regularly appointed, he must have notice, or he cannot be charged for neglect; as to the maid's refusing the book, and his refusing the rate, it was not said it was a rate of the parish, perhaps the person who tendered it had no authority. This is an order, and in its nature void, and ought to be quashed. Where a new authority is created by act of parliament, and the act is particular in its directions, as to the persons to be appointed, without giving an additional latitude to the Justices, it cannot be said they can exceed the number, and saying so many shall be appointed, is saying no more shall be appointed. Usages that can vary the construction of an act of parliament, must be universal, and not only the usage of a particular parish. In the case of *Burdley*, it was an universal usage, and for the necessity

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necessity of the thing, the opinion of all the Judges was to support that proceeding, in regard all the proceedings had been so for seven or eight years past. General usages, if they are immemorial, amount to a law, but I don't go only as to the time, but to the particularity of it. As to the case of *Clerkenwell*, four were retained, which they had a power to do, but here all are involved under one appointment, which the law does not give the court a power to quash as to part, but it must be good or bad *in toto*. *Chapple J.* This is as much an adjudication as any that ever came before the court, for the words are, that they adjudge, &c. As to the number, I think it would be more reasonable, that it should be confined to the act, than that they should have a latitude to extend beyond it. It has been held in the court, (in *Brecknock's case*), that an usage tho' ever so long, will not take away the effect of a charter, much less of an act of parliament. I think the adjudication is bad in every respect. It is not alledged that he has accepted the office, and he is to be punished for what are called neglects, but it seems to me that they are all improperly called so, and here is an entire judgment upon all. I am therefore of the same opinion as to the adjudication. It should be quashed,

Rule absolute for quashing the order of adjudication,

Et Cur. advisare vult as to the other point.

12. *R. v. Loxdale*, H. 31 G. 2: *Burr.* 445. Motion to quash an order of Justices appointing five overseers for the parish of *St. Chad* in *Shrewsbury*. Lord *Mansfield*. In the case of *R. v. Besland*, 19 G. 2, no opinion was given judicially, whether the appointment of one overseer was valid, nor was the appointment quashed. In the printed case of *R. v. Harman*, it is said the court refused to quash the order, appointing five overseers, but that is a mistake. * There is a known distinction between circumstances which are of the essence of a thing required to be done by an act of parliament, and clauses merely directory. The precise time in many cases is not of the essence. In *R. v. Sparrow*, the Justices had been guilty of a neglect in not appointing overseers within due time, and the poor could not have had a specific remedy, unless the Justices might do it after the precise time, in obedience to a *Mandamus* from this court. The clause relating to the appointment of overseers by Justices in or near the parish or division, is only directory. Where there are different acts of parliament *in pari materia*, though not referring to one another; even though

Not more than four overseers can be appointed for or in one parish, unless it is divided into two or more divisions or townships.

* See pl. 11.

some

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Some may be expired, yet they shall be taken and construed together, as one system, and as explanatory of one another; as for instance the laws concerning church leases, and those concerning bankrupts. The 39 *Eliz.* directs four householders, &c. The 43 *Eliz.* gives a power of appointing four, three or two householders in order to lessen the number according to the size of the parish, and there is some weight in the circumstance that the numbers descend. The statute 13 & 14 *ch.* 2. ought to be taken into consideration, but that directs the appointment of the overseers in the large parishes to be according to the rules of the 43 *Eliz.* The act of parliament in 1740, relating to *St. Martin's*, restraining the number of overseers there to nine, shows the opinion of the legislature, that the Justices had not power under the 43 *Eliz.* to appoint what number they pleased. Since that act there have been made two acts, 17 *G.* 2. c. 3. and c. 38. relating to overseers, without extension of their number or any variation therein. The precise number is not an immaterial thing, the office is a burden, and will not be better executed by a greater number than by a smaller, and I think the appointment of more than four is not warranted by the 43 *Eliz.* In the parish of *St. Andrew's Holborn*, there are eight overseers, but then there are three divisions there, and overseers for each, and orders of removal are made from one division to another. In *St. Giles's* there are eight, but in 1756, only four were appointed by the Justices, and four more serve voluntary as assistants: If five may be allowed there is no boundary, and then there will be great inconveniencies. Upon the whole the words are precise, and the usage which alone occasioned my doubt, turns out the other way. Mr. Justice *Wilmot*: The words of the act are so strong, that if the usage had been otherwise, I should have doubted whether it could have controlled them. In the 18th clause, with respect to the Island of *Fewlnesi* in *Essex*, a power is given to the Justices to appoint such a number of overseers as the exigence of the place shall require, which shews that where the legislature meant an indefinite number they have expressed it. The parish would not have a better security by an indefinite number, for each man is answerable only for the money he receives, and is accountable for his own acts only. The other Judges concurring, the rule was made absolute.

Appointment of
a single overseer,
not to be qual-
ified.

N. B. Mr. *Burrow* observes that *R. v. Besland* was confirmed as not necessarily appearing to be a bad order, for it might be that others were appointed by other orders.

At

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At and for what Time to be appointed.

See 43 *Eliz. c. 2. § 1.*

13. *R. v. Clerkenwell, E. 13 G. Fol. 4.* The whole court seemed to think the appointment of overseers of the poor on a Sunday to be a good appointment, for it may be in *Easter* week, and this is the first day of the week.

14. *R. v. Sparrow and other Justices of Ipswich, T. 13 G. 2, MSS. 2.* A *Mandamus* was issued, tested the 1st of June last, directing the Justices to nominate two or more substantial householders in the parish of St. Margaret in Ipswich, for overseers; to which they returned, that they have nominated three substantial householders within the said parish, to be overseers for the present year. *Lee* Ch. J. delivered the opinion of the court. It appears by this *Mandamus* that it is tested the 1st day of June, and the order is dated the 14th of June, 1739. The exception which is taken to the *Mandamus*, if it takes place, must quash that and the orders of appointment likewise: It arises on 43 *Eliz. c. 2.* which directs that overseers shall be appointed within *Easter* week, or within one month of *Easter*; the exception is, that this appointment is above a month after *Easter*. The court is obliged to take notice, when *Easter* was: this *Mandamus* appears to have issued after the month, and the order of appointment is therefore made after the month. The question is, Whether this order thus appearing to be above a month after *Easter*, is to be considered as a void appointment? As to the first exception, in respect to the statute directing the appointment to be within such a time under a penalty, &c. That is to be considered as the means to oblige the Justices to make the appointment within the time; but if an act is done beyond the time, in which thing is to be done by statute under a penalty, the act is not erroneous; but the party neglecting to do it, according to the statute, will be liable to the penalty; and so is the construction upon *West. 2.* in the case of pledges, *de pr. sequend.* replevin, because the statute is under a penalty, which is a remedy against the sheriff. 2 *Re. Ab.* 259. It may properly be said, that an affirmative clause does not imply a negative against the reason and justice of a case before the court, nay a construction that has been

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been contrary to express negative words in a statute has been made, when a remedy to the party has required it: much more in respect to an implied negative in a statute; an instance of that appears in *Magna Charta*, ch. 17. where it is said, *Communia placita non sequitur curiam nostram*, and yet Lord Coke in 2 *Inst.* 23. in his exposition of this cause says, that though by this act the *K. B.* are restrained to hold pleas of any real action, yet by a mean they may, for he says, statutes are always to be expounded, that there should be no failure of justice, but rather than that should fall out, that case by construction should be excepted out of the statute, where the statute be in the negative or affirmative; and so is the exposition of *Magna Charta*, ch. 12. 2 *Inst.* 25. 3 *Inst.* 36. By these resolutions it appears, in what manner Judges have construed acts of parliament, in order to advance the remedy intended by them. The 43 of *Eliz.* being made for the relief of the poor, must be taken liberally, and so was the opinion of the court in *R. v. Rufford*, *R. v. Uttoxeter*, and many others. Upon the foot of those authorities, I think that the best method in considering this statute is to pursue the rules laid down in 3 *Rep.* fol. 7. and where it is likewise said, that it is the duty of the Judges to make such a construction as may destroy the mischief and advance the remedy. The defect intended to be remedied by 43 *Eliz.* is the want of proper officers to take care of the poor; and the remedy is a command to the Justices to appoint proper persons, that is, substantial householders, within the time mentioned in the statute. It appears here that the Justices have not done their duty, in regard they have not made the appointment within the time. The act of parliament says, they shall forfeit *xl.* a piece for want of nomination; but the act doth not say they shall not do it at any other time, as in 12 *Car. 2.* ch. 25. s. 13. Where power is given to the *Ld. Chancellor*, &c. yearly, about the 20th of *November*, and the last day of *December* and at no other times, to set a price on wines: So that the clause there is not only affirmative, directing them to do it within the time, but there are also negative words, that it shall not be done at any other time; therefore as this remedy provided by the 43 *Eliz.* hath not been applied within the time, and that merely by default of the Justices, but since that time they have done all in their power and appointed overseers, it will be improper to put such construction on the act of parliaments,

as would deprive the parish of the remedy prescribed by it. The instances which I before mentioned of *Magna Chart. ch. 11, & 12* and the exposition in *2 Inst. 22, 23* are stronger than the case before us, for they were constructions to give a remedy to particular persons, against express negative clauses; but here it is to give a remedy to a parish upon an affirmative clause in the statute enforced with a penalty; and if this court set aside the act of the Justices, which gives that remedy, by appointing overseers, it would be going contrary to the rules laid down by *Ld. Coke in 3 Rep. 7* which I before took notice of. The best way of advancing this remedy will be, by considering this statute as directory to the Justices who are to follow these directions on pain of the forfeiture; and this is strengthened by the construction, on words of charters which have been penned in the affirmative clause: for in the case of the corporation of *Tours* which goes by the name of *Scol and Prioste*, this construction was made on the charter. The charter directed that the Aldermen were to be *annatim elegendi*. The judgment of this court was, that it amounted to making them annual officers, and to continue for a year; but that judgment was afterwards reversed in the *Exchequer* chamber, and their judgment was affirm'd in the House of Lords; for they held, that the annual *elegendi* was only directory. This was the case of aldermen, *annatim elegendi*. The words of the act of parliament now in question are yearly to be nominated. The same construction was in the case of the sheriff of *York*: Where they omitted to go to an election of a new sheriff, on the day in the charter. This case is as strong for obliging the Justices to make the order, though after the time, for it is suggested in the writ, that there were no overseers, which must be taken to be true, and they appoint, and therefore the necessity requires it, and it is not a fault in the parish. This statute must be considered as a command to the Justices, to make the appointment within the time, under the penalty; and if they do not do it, the parish and poor will have an opportunity to have the benefit of the act of parliament, by applying for a *Mandamus*, which will oblige the Justices to make the appointment; and as for their being for the present year, the construction is, that when they are appointed after the time, they are to continue until the next *Easter*, and then others are to be appointed; and therefore though this appointment is not within the time mentioned in the act, yet I apprehend

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hond it is within the equity of it, for this method is only to supply the neglect of the Justices, and when *Easter* comes, what is directed in subsequent clause in the act of parliament, viz. accounting within four days after their year, and appointment of others will take place. Order of appointment confirmed.

Three Appoint-
ments by two
Justices on three
several days, &c.

declined that

Appointment
may be for a
whole year.

Appointment on
Easter Wednes-
day, 1766, for
this present
year 1766.

15. *R. v. Merchant and Allen* Justices of *Bridgewater*, *E. 9 G. 3.* Six appointments of overseers of the poor, made by two sets of Justices for *Bridgewater*, were removed into the court of *King's Bench*. It appeared, that two had been made on *Easter Sunday*, two on *Monday*, and two on *Tuesday*, the usual day for making appointments in that town; but which were first made on the respective days did not appear. The court seeing no reason to presume, that those made by the defendants were subsequent to those made by the other Justices, If their appointment made on *Sunday bona fide* was prior to that made by the others on the same day, it was good: Therefore an affidavit of priority was necessary to induce the court to quash either.

16. *R. v. Searl*, 12 *Ann.* and *R. v. Jones*, 14 *G. 2. Fal.* It was objected to appointments of overseers, that they were appointments for an whole year, and that the year might expire before the time came for appointing new overseers, which by the stat. is to be in *Easter* week, or within one month after *Easter*, then there would be no overseers in the mean time, or that the time for appointing new overseers might come round before the year was expired, and in fact did so in the later case. But in both cases the court held an appointment for a year good, and in the later case cited that of *R. v. Great Marlow*, pl. 2. in which the court made the same resolution, and observed that if they did not, there was no appointment of this kind which could stand. See *R. v. Newstead*.

17. *R. v. Helling and others*, *E. 6 G. 3. Burr. Mansf. 1905.* An order was made upon *Easter Wednesday* 1766, by two Justices, appointing the defendants overseers of the poor of *St. Andrew's Holborn* above the bars, and *St. George the Martyr*, for this present year 1766. It was objected to this order, that this appointment being made on *Easter Wednesday*, and for the year 1766, the defendants were not obliged nor authorized, or intitled to continue any longer than the end of the year 1766, it not being an appointment for a year. *Lord Mansfield*: The real objections, I take it for granted, are

are not before the court. The only question before us is, Whether the order is good upon the face of it, or not? Now this order plainly means the overseers year, and that year is from *Easter 1765*, to *Easter 1766*. You must make it bad, by understanding it to mean the year of our Lord; but you cannot construe this order to be a bad one by understanding it so, for it manifestly means quite another sort of year. Mr. Justice *Wilmot* was silent, being a parishioner. Mr. Justice *Yates* was absent. Mr. Justice *Astle* concurred with Lord *Mansfield*, and said, that the construction may be taken two ways, one of them making the order good, the other making it bad, he therefore should take it in a sense which would make it good. Wherefore *per Cur.*

Rule discharged, and
Order confirm'd.

1766 to 1767

Of and for what Place to be appointed.

Where a parish is alledged generally it shall be intended a vill, and to be the same with the vill, and not to contain more vills, unless it be specially alledged; but a vill and a parish is all one, and it is sufficient to alledge a parish where a vill is required. *Skinner 554*. If a place be named generally, that place shall be taken to be and intended a vill. Adjudged *M. 10 W. 3. Salt. 501*. And *Parker* Chief Justice delivering the opinion of the court, observed, that if it were said at *Brewcomb's Lodge* generally, and no more, that might be intended a vill; but this is said to be an extraparochial place called *Brewcomb's Lodge*, so that this may be but one house; but it ought to consist of several houses and inhabitants, to be within the act of parliament. *Fort. 219. Fol. 108*.

18. *H. 11 Ann. Vin. Abr. title Poor 421*. The court held that the last clause in the 21 *f. 13 & 14 Ch. 2*. extends to towns and villages in Extraparochial places as well as within parishes; for this statute is of (towns, &c. in counties, not in parishes), and though there be not officers appointed in Extraparochial places, yet the Justices ought to do it upon complaint.

19. *R. v. Rufford, E. 8. G. Str. 512*. *Mandamus* to the Justices of the county of *Nottingham* reciting that, there are within the vill of *Rufford* divers substantial freeholders able to contribute to the maintenance of the poor, that there are no churchwardens or

H

overseers

A place named generally shall be intended a vill.
See pl. 35.

See Page 16, &c.

Overseers may be appointed to extraparochial places.

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overseers to make a rate, and that there are poor unprovided for, and therefore commands them to appoint overseers: They return that the vill of *Rufford* is part of no parish, but hath time out of mind been Extraparochial, without church, chapel or parochial rights, that there never had been overseers, therefore they cannot appoint. And after argument and consideration, the court was of opinion that the powers given by the 43 *Eliz.* to be executed in parishes, were, by the 13 & 14 *Ch. 2. c. 12.* extended to all townships and villages, parochial or extraparochial, and consequently overseers might be appointed in this case; for such purpose a peremptory

& *Mo. Mandamus* was awarded. In the same case, 1 *Mod.* 39. it was observed by the court, that most of the forests in *England* are extraparochial, but that they ought to maintain their own poor, that the Justices of Peace, by the general words, have power to appoint overseers in all parishes, which must extend to extraparochial places as well as all parishes in general, and that no subsequent words should control the general words in the enacting part.

What shall be a
vill.

20. *R. v. Welbeck*, T. 13 & 14. G. 2. *MSS.* 2. A *Mandamus* issued to Justices of the Peace for the county of *Nottingham*, suggesting, that there were several householders and farmers inhabiting and residing within the village of *Welbeck*, able to provide for their poor; and that there was no overseer at present of the said village; therefore the writ commands the Justices to nominate and appoint overseers of the poor for the said village of *Welbeck*. The Justices returned, that the place called *Welbeck* is an extraparochial place, and is not nor ever was a township or village, nor has ever been reputed to be a township or village, and *ea de causa* they cannot appoint. *Ch. Just.* It is certain that two houses will not make a village, as was resolved in the *King* and inhabitants of *Denham*, and the *King* and inhabitants of *Belvoir Castle*, 2 G. 2. where there were only a castle and an alehouse; and it was held not to be a village. The case of *Stokeprior* and *Grafton* was upon an order of settlement, which stated, that there was an ancient capital messuage, with three lodges belonging to it, which at that time consisted of five farms; and that they had overseers of the poor, and a parson was sent thither. The question was, whether he was legally sent thither, it being an extraparochial place? There was a rule to shew
cause

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cause, and that was made absolute; but it was without any argument or cause shewn. This is most certain, that where the place may be considered as a township or village, it is a place for which overseers may be appointed. If there is no such place as the village of *Welbeck*, I think it is an answer to this writ, to say as they have done here, that it never was nor is a vill, nor ever was, nor is reputed to be a village. The case of the *King* and *Rufford* was not parallel to this; for there it was returned, that the village of *Rufford* was not part of the parish of *Dunnington*, had no church, and was an extraparochial place: Whether it was part of the parish, or any other was not material; for it was admitted to be a vill, & *ideo* the *Mandamus* was granted. The only question here is, Whether this is not to be considered as a direct answer to the writ? It has not indeed said, that there are not several householders and farmers in the vill; but as the writ directs that overseers shall be appointed for the vill, and they returned it is not a vill, I think it is an answer to the writ, and if this return is false, it is a fact that may be tried by an information. *Page*, Justice, *Chapple*, Justice, accord. *Probyn*, J. *contra*. I have some doubt, whether the whole supposal of the writ should not be either admitted or denied; whether it be called a vill or a township is not material, for if there are houses sufficient in that place to make it a village, tho' it is called a hamlet, or by any other name, the court will consider it as a vill. The material part of the suggestion of the writ is, that there are several householders and farmers inhabiting the village, and the court may take upon them to judge, whether two, three, or more houses will make a village: For this purpose, it is a place that has several inhabitants capable of bearing offices, and maintaining their poor. If this be a material part of the writ, as I apprehend it is, then it is not answered by the return: for that reason, I think it is insufficient. *Curr. advifare vult*, and Mr. Justice *Probyn* afterwards, in the term following, declared, he was then satisfied that the writ was materially answered, by returning that it was not a vill; and thereupon the return was allowed by the whole court.

21. *R. v. Justices of Middlesex*, T. 27 & 28 G. 2. MSS. On a rule to shew cause why a *Mandamus* should not go to compel the Justices to appoint overseers for

Justices ought
not to appoint
overseers for se-
parate parts of
a parish, unless
it is necessary.
See pl. 24

that they had separate overseers, maintained their own poor separately, and had a separate rate. Rule discharged.

22. *R. v. Showler and Atter. T. 3 G. 3. Burr. Mansfield* Overseers appointed for a place consisting of one capital mansion divided into tenements, and two ancient cottages and one new one.
 1391. An order of two Justices, of *Lincolnshire Lindsey* nominating and appointing *Thomas Showler* and *John Atter*, being substantial householders of the township or village of *Haugh*, in the said parts, to be overseers of the poor of the said township or village of *Haugh*, for the year next ensuing, was confirmed at the sessions. And a case stated.

Thomas Showler, one of the overseers so appointed, having appealed to the general quarter sessions from this warrant or order of appointment, the first sessions adjourned it to the next; they state, that it appears to them that the said *John Atter* in the said appointment named, is a day labourer; and that the said place called *Haugh*, consists of a capital messuage, in which *Thomas Showler* in the said appointment named, with all his family, dwells, and of two small ancient cottages, and of one other small cottage lately built; all which cottages are let along with the said capital messuage, and the farm thereunto belonging to the said *Thomas Showler*; and of another tenement, part of the said capital messuage, and all of them inhabited by families; and that one of the cottages is inhabited by the said *John Atter* his family, and another of the cottages is inhabited by another day-labourer, and his family, and the other of the cottages is inhabited by a shepherd and his family, and the tenement, part of the said capital messuage, is inhabited by a poor widow and her three children; all which occupiers of the said cottages, and of the said tenement, part of the said capital messuage, are under-tenants to the said *Thomas Showler*: The said court of sessions therefore orders and adjudges, "That *Haugh* aforesaid, is a village or township, and that the said warrant or order of appointment be confirmed."

Mr. Harvey and *Mr. Kemp*, in answer to the two objections that had been made to these orders, viz. 1st, That the facts stated shew that this place is neither a township, nor a village. 2dly, That *Atter* appears to be only a labourer, not a substantial householder. Insisted, 1st, That the sessions have determined right in adjudging *Haugh* to be a village, for it appears upon the state of the case to be so. 1 *Inst.* 115, defines a village as consisting *ex pluribus mansionibus, et pluribus vicinis*, and here are five distinct mansions, which number an-

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swers to the term *plures*. And both *Spelman's Villars Anglicanum*, and *Camden's Britannia*, mention this place as a village; which is at least a reason for sending the order back to the sessions, in order that the fact may be more fully stated. The two cases cited are not applicable to the present case, for the former was upon an order of removal, and *Southwold Park*, the extraparochial place, consisted of only two houses, and two families, which could not be called *plures*. The latter was a nobleman's seat, converted within time of memory into five houses and farms; but that case was never argued, and the rule was made absolute without defence. The court were clearly and unanimously of opinion, that both these orders ought to be discharged. Lord *Mansfield* observed, that by this method a place might be made into a village, which in fact was not so, and the inhabitants of it might by this contrivance withdraw themselves from contributing towards the support of the poor of their parish. If it be really a vill, you may make another appointment. Mr. Justice *Willmot* cited, and laid a good deal of stress upon a case in *M. 1740. 14 G. 2. B. R. R. v. inhabitants of Welbeck*; which Mr. Justice *Dennison* also said, he very well remembered. It was a *Mandamus* to appoint overseers in and for the village of *Welbeck*; and the return was, that it was extraparochial, and is not, nor was, nor is, or ever was reputed to be a village or township. Both orders quashed.

Note, Their answer to the 2d objection was, that the original order expressly called *Atter* a substantial householder; but as the court were so clear against the orders upon the first objection, as to allow it without even hearing the counsel who were to argue in support of it, this second objection was not discussed, nor even entered into.

23. *Peart* and another v. *West Garth* and another. *H. 5 G. 3. Bur. Mansfield, 1610*. Upon shewing cause against a *Mandamus*, "to appoint four overseers for the whole parish of *Stanhope*, in the county palatine of *Durham*." The question was, Whether the several districts, within it were one entire parish, township, and village, within the intent and meaning of the statutes made for the relief of the poor, and for that purpose have had, and of right ought to have one joint appointment of overseers of the poor, for the joint relief and maintenance of the poor in and throughout the parish? or, Whether

Whether the said several districts, being divided into six separate constableries, constituted four distinct and separate townships, or villages, within the intent and meaning of 13 & 14 Car. 2. ch. 12. § 21. ? It was by consent of the parties tried upon a feigned issue, at the last assizes at *Durham*, and a verdict was found for the plaintiff, with 1 s. damages, and 40 s. costs, subject to the opinion of this court upon the following case : That from 43 Eliz. to 9 G. 1. (1723) the parish of *Stanhope*, had one joint appointment of overseers of the poor of the said parish, and during all that time the poor of the said parish were jointly relieved and maintained by entire and general rates upon the whole parish. During the time abovementioned, there were four churchwardens, and four overseers of the poor, which four overseers were respectively nominated out of each of the four quarters or districts within the said parish, called *Forest* quarter, *Newlandside* quarter, *Park* quarter, and *Stanhope* quarter, viz, one out of each of these quarters, and in each quarter there was one churchwarden, and one of the said overseers who collected the poor rates in the quarter or district wherein they respectively resided, but the money collected by the several churchwardens and overseers was levied under one entire assessment upon the whole parish, and carried to one general fund, and was applied to the joint relief of all the poor of the said parish. The parish is twenty miles in length, from east to west, and eight miles, at a medium, in breadth. The first quarter is one distinct constabulary, the *Forest* quarter one, and the *Stanhope* quarter one, and the *Newlandside* quarter consists of three constableries ; but these three constableries compose and are considered as one quarter only. On 17th July, 9 G. 1. At the general quarter sessions for the county of *Durham*, it was ordered, that the several townships or constableries of *Stanhope*, *Fosterly*, *Newlandside*, *East Gate*, and *West Gate*, should separately maintain their own proper poor. This order of sessions was thus prefaced—“ For-
 “asmuch as this court has been moved by and on the
 “behalf of the township of *Stanhope*, and also of the se-
 “veral townships and constableries of *Fosterly*, *Newland-*
 “*side*, and *East Gate*, and *West Gate*, within the parish of
 “*Stanhope*, that each of them should and might main-
 “tain their respective and proper poor, distinctly and se-
 “parately from each other, and from any other part of
 “the parish of *Stanhope*, but the said motion being op-

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“ posed by the constabulary of *Forest* quarter within the said
 “ parish of *Stanhope*, but not by any other part of the
 “ said parish :” Now after hearing counsel it is ordered
 (*ut supra*) unless cause be shewn to the contrary, by the
 constabulary of *Forest* quarter, at the next sessions. From
 that time there have been separate appointments of over-
 seers of the poor, for each of the said four quarters
 or districts, and each of the said quarters maintained
 their own poor separately, excepting that about twelve
 years ago, two townships or constableries called *Bishop-
 ley* and *Foslarly* within *Newlandside* quarter, separated
 themselves from the rest of that quarter, and have ever
 since had separate overseers, and maintained their own
 poor separately. The case further stated, that orders of
 removal had, from time to time been made, since the year
 1729, to the year 1761, (exclusive of each of these
 years) for the removal of poor persons from one of the
 said quarters or districts to another, and appeals made by
 one quarter against another, concerning orders of Justices
 relating to the poor of each. The question was general
 —Whether the plaintiffs were intitled to recover? But
 the particular question debated was—Whether the several
 places or districts were one entire parish, township or
 village, within the 13 & 14 C. 2. c. 12. ? The court upon
 this first argument thought the Justices had no power to
 divide parishes (to fitter parishes into pieces) as ‘Mr.
 Justice *Willmot* expressed himself. It was argued a se-
 cond time ; after which Lord *Mansfield* said, he had no
 doubt upon the first argument. The policy of this law,
 of 13 & 14 C. 2. was mistaken, it went upon a wrong
 principle ; the divisions ought rather to be enlarged than
 diminished. As to the question itself, consider, 1st, What
 was done. 2^{dly}, Upon what foundation? It ought to
 appear that there was an inability in the parish, to have
 the benefit of the act of 43 *Eliz.* Now here no such
 inability appears, but quite the contrary, for a great num-
 ber of years, so that there is no foundation for the division.
 The acquiescence under it was upon a false notion,
 “ That the sessions had such a power which they had
 “ not ;” and there is no inconvenience in setting right
 this wrong usage, which has obtained for 40 years. In the
 case of *Kentishtown* all the Judges held, “ that the foun-
 “ dation of such a division of a parish must be an inability
 “ of having the benefit of 43 *Eliz.*” Here the foundation
 is wanting, therefore judgment must be for the plaintiff.

Mr.

Mr. Justice *Wilmot* also thought that the larger the circle the better, therefore it would be more proper to enlarge than to lessen the division. The statute of 13 & 14 C. 2. c. 2. goes upon this basis, "That the parish is so large, as that it cannot have the benefit of the 43 *Eliz.*" This therefore is a fact that ought to be quite clear and certain; whereas on the contrary, it appears in the present case, "That this parish actually had that benefit from 1602 to 1723, above 120 years." The sessions do not seem to have had any sort of power to make such an order, therefore their order is a mere nullity; it was not made upon any appeal, but upon a motion made on behalf of some of the quarters, and opposed by another. The subsequent usage for 40 years cannot vary the right; for we cannot presume that *omnia rite acta sunt*, because we see that it was founded upon this order of sessions, and it does not appear that the parish is so large that it cannot have the benefit of 43 *Eliz.* Therefore they ought to appoint running overseers over the whole parish. *Per Cur.* Judgment for the plaintiff.

Appeal against the Order appointing Overseers.

24. *R. v. Holditch*, T. 13 & 14 G. 2. MSS. 2. An order for appointing overseers made by two Justices was returned by *Certiorari* into the court, before the next quarter sessions was held, so that there was no opportunity of appealing, and it was moved the beginning of the term, that it might be affirmed, unless cause is shewn before the end of the term; and on the last day of the term it was moved to affirm absolutely. *Sed per Cur.* This seems to be a manifest injustice, and an attempt to take away the benefit of appealing, from the persons who are intitled to it. The party who has the right of appealing may remove it, if he thinks proper, and so was the *King* and *Harman*. The rule was enlarged until next term. When it came on to be argued again, it was stated, that two Justices within a month after *Easter*, viz. on the 28th of *April*, 1740, appoint *A.* and *B.* to be overseers of the poor of *W.* and it be notorious they were not within the act, not being householders, it was intended to appeal to the sessions. Eight days afterwards, viz. *May* 6th, the Justices appoint two new persons, who have acted under that appointment, and both their orders were removed by

by *Certiorari*, before the next quarter sessions was held. In *Trinity* term last it was moved to confirm the said appointment, and a rule was granted, which was enlarged to this term; and it being again moved to confirm the first appointment, it was on the other side, in support of the second appointment, prayed that the rule might be enlarged, to give them an opportunity of moving to quash the *Certiorari*, because being before the next quarter sessions hindered their privilege of appealing, and the rule was enlarged accordingly, and the court took the exception to the first appointment that it was by two Justices of the Peace of the division where *W.* lay; but it was not said that *W.* was in the county of *Surry*, or in what county it was.

C H A P. II.

POOR'S RATE.

By whom to be made and allowed, *pl.* 25.—
For what Time, *pl.* 32.—For what Place, *pl.* 33.—In what Proportion or by what Rule, *pl.* 38.—Upon whom, *pl.* 43.—And upon what to be laid, *pl.* 53.—Of levying and distraining for, *pl.* 70.—And Appeal from the Poors Rate, *pl.* 76.—*Certiorari*, *pl.* 80.

See *pl.* 29.
A poor's rate
made at sessions,
must appear to
be on appeal.

25. **A**LTHOUGH a poors rate be really made at the sessions on an appeal, yet if it do not appear by the order itself, as by recital of the former order, &c. the latter order shall be quashed, and the court refused to supply this defect in the order by affidavits. *T. 1 W. & M. Comb.* 113.

26. The Justices (at sessions) may order the ancient inhabitants to make a new rate. *2 Salk.* 524. *Sed. Quere.* See *17 G. 2. c. 38. s. 6.*

By what Justices
allowed,

27. The order need not set forth, that the Justices allowing the poors rate were dwelling in or near the division or place where the parish lies. *Vin. Abr.* title *Poor*, 425.

28. Case of parish of St. Leonard's, Shoreditch, M. 10 W. 3. Holt. 508. A poors rate, made by the churchwardens, &c. and confirmed by two Justices, in which no tax was laid upon personal estates, was, upon the appeal of several inhabitants, quashed at the sessions. A new rate was made, in which the real estate was taxed ten times more in proportion than the personal; and upon appeal to the sessions was quashed. Upon motion to quash these orders of sessions, it was urged, that the sessions could only relieve particular persons over-rated or aggrieved, but could not set aside a whole rate at once. *Per Cur.* The Justices are enabled by the words of the 43 Eliz. c. 2. §. 6. to take such order as by them shall be thought convenient upon appeals from poor's rates; in either of these cases of the first or second rate the Justices could not have given relief without setting aside the whole rate, because the rate was burthensome to a whole set of men; and they may either make a new rate themselves or order the churchwardens and overseers to make it. Orders confirmed. 2 Salk. 472. 483. *Farely* 10.

29. R. v. Aberford East, M. 12 W. 3. 2 Ld. Raym. 798. An original order was made at the sessions, whereof the tenor was thus: It is ordered that the churchwardens and overseers of, &c. do make an assessment to the church and poor by a pound rate, and in the said assessment do assess Grayson Field lands and all other lands within the said constabulary to the use aforesaid, equally by a pound rate; and now objection was made to it, that they have not jurisdiction to make such original order at the quarter sessions, though it had been otherwise if it had come before them on appeal; and the order was quashed. Sessions cannot make an original order respecting a rate.

30. R. v. The Justices of Dorchester, M. 7 G. Str. 393. *Mandamus* was issued to the defendants, to sign a poor rate made by the churchwardens, &c. Before the return a motion was made to supersede it for several objections to the fairness of the rate, and that this would be better for the poor than to reserve the debate of them for a formal return. *Per Cur.* The two Justices are necessary to sign the rate only by way of form, for the churchwardens, &c. have the power of making it; and whether it be a fair rate or not is proper for the jurisdiction of the sessions, and was never intended for our examination. The *Superfedeas* was denied, and the Justices said, that they could not allow the rate, The Justices allowance of a poor's rate is matter of form only. See pl. 63.

rate, it not being a just and proper rate: The court ordered an attachment against the Justices, who thereupon returned that they had allowed the rate.

See the case of
St. Mary's in
Taunton.

31. *R. v. Folly*, T. 27 & 28 G. 2. MSS. On a *Mandamus* to the Justices of *Wotton Bassett*, to allow a rate, they returned, that ever since the 43 *Eliz.* the Justices have appointed four, three, or two overseers, within that part of the parish which lies within the borough, and that they have always made rates within their jurisdiction; then they say that the rate was offered to them, made by overseers appointed by the Justices of the county and not of the borough. *Per Cur.* The return must be confirmed.

For what time.

32. *M. 7 G. 8. Mod.* 10. The poors tax ought not to be made for a year. See *Tawney's case*, and *Stevens v. Evans*.

For what place.

33. *Jeffrey's Case*, 31 *Eliz.* 5 *Rep.* 66. He was assessed for some land which he either occupied, or for which he received rent in the parish of *Haylesham*, toward the repair of that church. He never inhabited at *Haylesham*. The court resolved: First, that, notwithstanding that the house in which *Jeffrey* inhabits is in another parish, yet, since he has land in the parish of *Haylesham* in his own occupation, he is a parishioner there; for he is not only a parishioner where he eats or lies in the night, but also where he occupies land he is to be considered as resident, and is there a parishioner. Secondly, If in this case *Jeffrey* shall not be charged towards the repair of the church at *H.* in the same manner a person who dwelling in one parish, occupies the greater part of the land in another parish, may refuse to pay to the repair of that church, which by that means may fall to ruin; But it was determined, that the lessee or occupier of lands only, not the lessor, who receives rent for them, shall be charged on account of his rent, because there is an inhabitant and parishioner who may be charged, and the receiving of rent does not make a lessor a parishioner. Thirdly, that the charge is

upon the person not upon the land, but upon the person with respect to the land, for the greater equality and indifference. Fourthly, that *Jeffrey* being, in the judgment and contemplation of law, an inhabitant and parishioner of *Haylesham*, he may attend the meetings of the parishioners there. The ecclesiastical lawyers being consulted, declared that these resolutions were exactly agreeable and conformable to the ecclesiastical law. And in *Pager's* case 41 *Eliz.* there were the same resolutions. *N. B.* To the original report is subjoined a desire that the reader will consider well the extensive consequences of this case, which note the compiler hopes will apologize for the insertion of the preceding resolutions, which seem to be the foundation of the determinations upon the part of the 43 *Eliz.* which relates to the assessment of the poor's rates. See *Winches Rep.* 53.

34. *Hilton v. Pawle. H. 3 Ch. Croke, Ch. 29. & Litt. 72.* Trespass for taking a saddle of the plaintiff's at *Stokegoldingham*. Upon not guilty, a special order was found, viz. That the parish of *Hindley* in the county of *Leicester*, is, and time whereof, &c. was an ancient rectory and parish church; and that the village of *Stokegoldingham* is an ancient village, and parcel of the rectory of *Hindley* aforesaid; and that from the time of king *Henry* the VI. and always afterwards, until this present, there is and hath been a church in the said village of *Stokegoldingham*, which, during all the said time, hath been used and reputed as a parish, and that the inhabitants of *Stokegoldingham* aforesaid, during all the said time, have had all parochial rites, and churchwardens; and that the said village of *Stokegoldingham* is distant from *Hinkley* about two miles, and if *super totam materiam in forma prædicta compertam videbitur iusticiariis & curiæ hic*, that the aforesaid village of *Stokegoldingham* be such a parish, as by the statute 43 *Eliz. c. 2.* for the relief of the poor is chargeable to the maintaining their own poor, then they say the defendant is guilty to the damage of 7 *l.* and costs 40 *s.* and if *super totam materiam in forma prædicta compertam videbitur iusticiariis hic*, that the aforesaid village of *Stokegoldingham* stands chargeable by the statute aforesaid, to maintain the poor of *Hindley* aforesaid; then they say the defendant is not guilty. And upon the verdict being argued at the bar by *Athos* for the plaintiff, and *Berkley* for the defendant, the court resolved and delivered their opinions *seriatim* for the plaintiff: That this is such a parish within

within the Statute of 43 *Eliz.* as is chargeable for the relief of the Poor of *Stokegoldingham*, and not for the poor of *Hinkley*; for being found that it was a church in the time of king *Henry the VI.* *et nunc & semper possea*, reputed for a parish, and not in the negative, that it was not a parish before, it may be well intended to be a parish before, and it doth not exclude that it was not before time, whereof, &c. and although it should not be so intended, yet being found that it was a church then, and that there were churchwardens there, it is a parish within the statute, although it be but a reputative parish; for being so long in use before the statute, and at the time of the statute, the statute appoints, that the churchwardens and three or four overseers of the poor joined with them shall, &c. and no churchwardens of *Hinkley* are churchwardens of *Stokegoldingham*, and by consequence have nothing to do there; and the churchwardens of *Stokegoldingham* are only to meddle with the church there, and by consequence with the poor of the parish. And the statute hath an intention to confine the relief to parishes then *in esse*, and that every parish should meddle with its proper village, and their poor are to be provided for there, and not elsewhere. *Judgment for Plaintiff.*

Paupers may be removed to extraparochial places, the Justices first appointing overseers, if necessary to make a rate. But the extraparochial place must have at least the reputation of a vill or township.

35. *Delling v. Stokeland*, *H. 2 Ann. Fort.* 219. The opinion of the court was delivered by Lord Chief Justice *Parker*. The pauper was born at *Delling*, and was sent to *Stokeland*, having been hired and served there for a year. *S.* appeals to a sessions, and insists that he ought to be sent to *Brokeham Lodge*, an extraparochial place, because he had lived there some years as a covenant servant; and the question now is, Whether a person can gain a settlement in an extraparochial place? The statute 13 & 14 *Ca. 2.* is general, the words are expressly so (and many other counties in *England* and *Wales*,) if it was not to extend to any other counties than those mentioned in the act, it would not extend to one in *Wales*, for not one of the counties mentioned is in *Wales*. The next thing to be considered is, Whether it extends to extraparochial places, or only to townships and vills within a parish? It was first intended only for the latter, because the parishes were so large that the townships and vills could have no benefit from the 43 *Eliz.* without the farther provision of the 13 & 14 *Ca. 2.* So extraparochial places though out of the purview of the statute, yet being within the same mischief, were all of opinion that it ought to extend to them, If then there

there can be a settlement there may be a removal. But suppose there be no officers in those extraparochial places, the persons who are aggrieved ought to complain to the Justices, and they ought to appoint officers, and the Justices ought to appoint overseers of the poor as they do in other places, pursuant to the statute 43 *Eliz.* But we think this order ought to be quashed, because they have not brought themselves within the act, which extends only to such extraparochial places as are townships or vills. It is said here that the pauper served several years at a certain place call'd *Brokeham Lodge*, if it were said at *Brokeham Lodge* generally, and no more, that might be intended a vill. But by the present description it may be only one house, whereas it ought to consist of several houses and inhabitants to be within the act of parliament. The last legal settlement must be expounded such as can be by this act. Suppose one goes to live in an extraparochial place which is neither town nor village, Would this discharge him of all other settlements? As he shall not stay where he is not settled, so he must go where he is last legally settled, where he can be sent.

36. *R. v. Denham, E. 8 G. 2 Burr. S. C. 35.*
The pauper lived several years in a farm in *Southwold-park*, which is stated in the order to be an extraparochial place, consisting of two houses and about 300 acres of land only, belonging to and in the occupation of different persons, and of the value of about 300 *l. per ann.* and that it did not appear, that in the said extraparochial place there are or ever were any persons appointed to receive or provide for the poor happening therein. Lord *Hardwick*: Before the case of *Dolting and Stokelane*, (pl. 48.) it had been generally taken that the Justices had not power to send paupers to extraparochial places, where there were no overseers of the poor. The substance of the opinion of the court in that case rested upon this limitation, that the place should amount to the notion of a township or village. By the 43 *Eliz.* there must be two overseers at least; but when the whole parish consists of two houses, the whole parish must be perpetual overseers, and be chosen by nobody, and have jurisdiction over nobody but themselves; if this place may be called a township or village. Mr. *J. Page* was also of opinion, that a single house or two houses cannot amount to the notion of a town or village. If it had been formerly a town; if the houses were in

Ser: 2 Roll. R. 160. Cro. Car. 93. 395. 2 Mod. 39. and 1 Sid. 292.

Two houses do not amount to the notion of a vill or township.

fact:

fact decayed and gone, it would cease to be a town or village. Mr. J. Lee observed, that the notion of a village according to the ancient law is a tithing consisting of ten families; that according to the modern notion it is a place that has a constable: That it ought at least to have the reputation of a vill or town, and that Lord Coke's definition of a vill, "*ex pluribus mansionibus vicinata*," must mean more than two houses. And the order was affirmed.

See 4 Mod. 157.
and R. Raym.
477.

37. *R. v. Grafton*, E. 10 G. 2. Burr. S. C. 101. The manor of *Grafton* is an extraparochial place, once consisting of a capital mansionhouse, and three keepers lodges in the park adjoining, the park being since converted into farms, of which there are five, with each a dwelling house, including the old lodges, and in the occupation of five different tenants, and never had an overseer till one was appointed for the purpose of making a removal. This was held (but without defence) not to be a vill or town.

In what Proportion or by what Rule.

Mandamus does not lie to make an equal rate.

38. *R. v. Overseers of Barnstable*, M. 2 G. 2. Fol. 26. *per Cur.* We grant a *Mandamus* to make a rate, but where a rate is already made, we cannot grant a *Mandamus* to make an equal rate; for we will not presume that the overseers will act unjustly.

Rent is no standing rule, there ought to be a regard ad statum & facultates.

39. *E. 10 W. 3. W. Comb.* 479. *Mandamus* to sign a poor's rate was directed to the Justices of Peace of the precinct of the cathedral church of *Norwich*. They return that for several years past complaint was made that the poor's rate was unequal, and that upon examination they found that the overseers did not assess by an equal pound rate; and they give several instances of the inequality of one assessment, and that one of the overseers brought another rate, which they thought more equal, and signed it. Motion was made to send a peremptory *Mandamus*, because the churchwardens and overseers may fix the rate by their discretion, and it is not necessary to be by pound rate, they might have respect to the number of the family, &c. and the person hath remedy by appeal; and as to this point the court agreed, that the rent is no standing rule; for circumstances may differ, and there ought to be regard *ad statum & facultates*; and the peremptory *Mandamus* was refused, because the Justices having two rates presented to them, signed that which they thought most equitable; neither perhaps was good, but the Justices had election.

40. *R. v. Audley*, *M. 12 W. 3. 2 Salk. 526.* In the year 1665, a certain rate was agreed to by the inhabitants of *Audley*, which had been followed till the 11 *W. 3.* when a new rate was made, which upon appeal to the sessions was quashed, and the old rate ordered to continue; and now it was objected, that it did not appear to be a poors rate, being called a parish levy. Which might be as well for the church as the poor, and in that case the Justices had no jurisdiction. To this it was answered by counsel, that the court will intend it. Upon this, *Holt* Chief Justice observed, that *Twisden* Justice used to say that if a particular jurisdiction does not shew the matter to be within their authority, it must be concluded to be out of it. This rate must be quashed, because the Justices have no authority to make a standing rate, or confirm an old rate; by 43 *Eliz.* the rate must be equal, to which purpose it must be continually altered, as circumstances alter. Although the Justices at sessions need not give a reason for the order, yet if they give a reason which is a bad reason, we must take notice of it and quash the order, because it appears to us to be no reason.

Justices have not authority to make a standing rate, or to confirm an old rate.

If justices give a bad reason.

41. *R. v. Clerkenwell*, *H. 2 G. Fol. 15.* A poors rate was made according to the land tax, and it was objected to, as not being an equal taxation because the personal estate, in the publick funds, was not chargeable to the land tax, but that it is to the poors tax. And by the whole court, this rate for that reason was set aside.

Assessment according to the land tax not good.

42. *R. v. Brograve*, *M. 10 G. 3.* The special order of sessions (dated the 5th of April 1769) recited that *Berney Brograve*, Esq; at some time in the year 1663 appealed from a poors rate, for the parish of *Worstead*, and that upon a reference being made to three Justices, they, in order to settle all disputes, recommended to the parties, to consent to the rate then made according to the method they had formerly taken, but did not particularly recommend or object to the mode of rating itself, which was that all occupiers of lands in their several occupations, within the said parish, should be assessed, at three fourths of the yearly value of such lands, and that all occupiers of houses should be assessed after the rate of one moiety of their respective houses, to which rate all parties being then present did agree, and the assessments of that parish continued to be made in that proportion from that time to the present, and that particularly on the sixth of January 1769, a rate was made in that proportion, from which Mr. *Brograve* appealed. And now upon hearing the

One moiety of the yearly value of houses and 3-4ths of the yearly value of land is a good assessment.

The profits of a fair.

the appeal, the appellant objected that he was rated for the profits of the fair in the said parish, which upon evidence appeared to be let by him to one *Fowler*, and also that *H. Middleton*, who occupied about seven acres of land as tenant to the appellant, was not rated for it. Hereupon the court amended the rate, by striking out the particular part wherein it appeared that the appellant was rated for the said fair, and by therein assessing *H. Middleton* for the said seven acres; the said *H. Middleton* appearing in court and consenting to the same, and confirmed the said rate as to all the rest.—The Solicitor General insisted that there appeared a glaring inequality upon the face of the order: he said, that it could not be presumed that the tax was made according to the yearly rent; because the tax was upon the occupier (not land-lord) at the yearly value, which must be construed to mean the clear yearly value, after all deductions whatsoever had been duly estimated and considered, and in that case there can be no reason for any distinction between lands and houses. Lord *Mansfield*: If we were obliged to quash this rate, it would be because it appeared upon the face of it glaringly bad and unequal. It is argued that the yearly value means the clear yearly value after all deductions, and that we ought to put that construction upon it, and then the rate would be unequal. But as it may with propriety have another construction, we ought to put such construction upon it as will make it good. Mr. *J. Yates*, Unless the rate appears upon the face of it to be self-evidently unequal, we cannot interpose, for it is a clear settled rule that we cannot decide upon the inequality; and that it is not self-evidently unequal, the argument which it has bore shews. And as Men and Judges we cannot but know that there is a great difference between lands and houses, occasioned by the repairs and dangers incident to the latter. It has been said indeed that occupiers must mean tenants. But I do not think so, the contrary is the presumption of law, and I therefore think that the rate ought to be confirmed, and that it has properly distinguished between one sort of property and another. And the rule was discharged, upon the motion of Mr. Serjeant *Foster*.

Who is rateable.

43. It was ordained (by the great council of the kingdom, at some time before the reign of *Edward the first*,) that

that the poor should be sustained by parsons, rectors of the church, and by the parishioners, so that none of them die for want of sustenance. *Horne's Mirror*. p. 24.

44. *Okely v. Salter*, T. 8 Jac. Yelv. 176. It was determined in B. R. that by the 19 § of the 43 Eliz. if the plaintiff voluntarily delivers any goods for what he is assessed to the poor, an action will not lie for them against the overseers, for the words (sale and distress of goods) are inserted in the act only for examples.

For personal representative,
Stevens v. Evans,
Voluntary delivery.
See pl. 70.

45. *Sir Anthony Earby's case*, 9 Ca. 2 Bulf. 354. Assessments for the poor ought to be made according to the visible estate of the inhabitants there, both real and personal, and no inhabitant there is to be taxed to contribute to the relief of the poor, in regard of any estate he hath elsewhere in any other town or place, but only in regard of the visible estate he hath in the town where he dwells, and not for any other land which he hath in any other place or town. And that by the words and meaning of the statute 43 Eliz. the occupiers of the land are to be assessed, and not the lessor, who receives the rents, the occupier being by law only to pay the assessment, unless it be specially provided for, as to this payment between him and the lessor. By *Hutton and Croke*, J. who declared that it had been so resolved by all the judges.

Persons not to be assessed for A. in regard to estates the possessor in B.

46. T. 25 Ca. 2. 3 Keb. 255. Parsons ought to contribute to the poor; by *Hale* Chief Justice who said it hath been so agreed, by all the Judges, in the parson of *Pancrass's case*,

Occupier to be assessed, not the lessor.
See pl. 33.

Persons chargeable.
See pl. 49, 59.

47. H. 27 Ch. 2. 3 Keb. 572. A *Mandamus* was prayed to the Mayor of *Chichester*, to sign a tax made on the palace, &c. of the Bishop of *Chichester*, being within the parish of *Subdeanry*, and granted, because—against this there can be no prescription, and all the prebendaries which live in the same close pay it.

A bishop for his palace.

48. R. v. *Barkin*, H. 5 Ann. 2 Lord Raym. 1281. It was resolved by *Powel*, *Powis* and *Gould*, Justices, that a farmer for his stock was not taxable, contrary to the opinion of *Holt*, Chief Justice, whereupon the following rule of the court was made. *Suff. Jf. Reg. vers. Inhab. parochiæ de Barkin, & hamlet de Needham, &c. in parochia prædictâ. Super matura deliberatione, &c. consideratum est, &c. quod firmarius a farmer anglice, non erit onerabilis & taxabilis ad ratas pauperum, pro pecuniis, anglice stock, & quod artifex anglice tradesman, est onerabilis, &c. pro pecuniis, anglice stock in arte, anglice trade.*

Tradesman is taxable for his stock, but a farmer is not.

See pl. 52, 57.

Vicar is charge-
able.

49. *R. v. Turner*, H. 4 G. Str. 77. The defendant was assessed towards the poors rate for his tithes as vicar, and on appeal was absolutely discharged at the sessions. *Per Cur.* As vicar he is chargeable by the 43 *Eliz.* and the sessions has only power to moderate, not to discharge. *Salk.* 483, 524.

Occupier not
not living in the
parish.

50. If a man lives not within a parish, he is to be assessed according to his lands, but if he lives within the parish he is to be rated as dwelling there. By *Parker* Chief Justice, *Vin. Ab. Tit. Poor* 424.

p. 63.

51. *R. v. Officers of Weobly*. T. 19 G. 2. MSS. 2. Motion for a *Mandamus* to the churchwardens and overseers of *Weobly* in *Heresfordshire*, to insert the names of particular persons in a poors rate, upon an affidavit that their right of voting for members of parliament depended upon it, and they were omitted in the poor rate. Against the motion it was insisted, that this case was provided for by 17 G. 2. whereby an appeal is given to the sessions to persons left out of the rates, as the parties here were; and it was not proper for the court to interpose, by way of *Mandamus*. *Lee*, C. J. As to the authority of granting a *Mandamus*, there is no difference made by 17 G. 2. It has been determined, that this court can grant a *Mandamus* to make a rate, if none is already made, or an equal rate, if it is unequal; but we can do no more than order them to execute the authority given them by the act. We never issue a *Mandamus* to grant administrations to particular persons, or to give a particular judgment where it is discretionary in the inferior jurisdiction what judgment to give, or to whom they will grant administration. If the sessions refuse to receive the appeal, we can grant a *Mandamus* to compel them to do it. *Mandamus* refused. 2 Str. 1259.

Justices in ses-
sions ought not
to quash the
whole rate, un-
less there is a
necessity for it.

52. *R. v. Witney*, E. 10 G. 3. Upon the appeal of *H. Dorne* and others, against a rate made on the 22d May 1768, for the relief of the poor of the parish of *Witney* in *Oxfordshire*. The cause of appeal was, for that there were within the said parish many manufacturers of blankets and other traders who employ there many servants and apprentices, and such manufacturers and traders were not assessed in the said rate for their stocks in trade, and for that reason only the said rate was quashed, (the court being of opinion that stock in trade ought in all cases to be rated) subject however to the opinion of the

the court of K. B. on the following facts. It appeared, and was admitted that there have long been many such manufacturers and traders within the said parish, who have been constantly assessed to the land-tax, for their respective stocks in trade, but none of whom have been ever charged with the payment of any rate for the relief of the poor, on account of such stock. That as well the said manufacturers and traders as all other occupiers of lands and houses within the said parish, have been and are constantly assessed, in this and all former rates for the relief of the poor, as well as to the land-tax, for the lands and houses in their respective occupations; and that the churchwardens, &c. of the said parish have been generally, though not always, traders. Lord Mansfield. This matter does not come before the court in a proper manner. It ought to come on by a complaint of some one who is rated for somewhat which he thinks not rateable. The court will not give an opinion on every general question which the sessions may think fit to bring before it. The order is wrong, because the Justices in sessions ought not to have quashed the whole rate, (which in cases where it is not absolutely necessary, they are forbid to do by statute 17 G. 2.), but to have added those persons, and that property which they thought was illegally omitted: I am therefore of opinion that the order is wrong on the face of it, and ought to be quashed. If this court should determine so vague and general a question, as whether stock in trade be rateable, without any distinctions or enumeration of particularities, it would sow the seeds of dissention all over the kingdom. Mr. Lucas and Mr. Dandridge in support of the order, urged, that the court ought not to quash the order without entering into the merits of the question; because every thing should be presumed in favour of the order, and the Justices have stated that there are many manufacturers; and tradesmen not rated, and that they therefore quashed the rate. Mr. Justice Aston: The Justices being of opinion that all stock in trade ought to be rated, should have put on the rate each man whom they thought rateable, and should have said for such stock (particularising it) so much. If such person thought himself aggrieved he might have removed the order by *Certiorari*. Mr. Justice Willes: I think this state of the case too general; one thing the Justices have said in it which cannot be true, viz. that stock in trade ought in

Court will not determine so general a question, as whether all stock in trade is rateable or not.

See pl. 48.

all cases to be rated. In some cases it may be rateable, in others not. Mr. Justice *Blackstone*: I think this order bad in matter, form and circumstances: It is no where said, unless it can be taken by implication, that there is any stock in trade in *Witney*. The court might infer that tradesmen must have stock, but not a manufacturer. Order quashed.

* What is rateable.

Toll of a market chargeable.
See pl. 54.

Lessee of a stall in a market not chargeable to the repairs of a church. 2 Roll. R. 238.

Stock upon land cannot be taxed.
See pl. 48.

Hospital lands chargeable.
See pl. 65, 68.

A farmer shall be taxed for his stock, if more than necessary for carrying on his farming business.
See pl. 48.

53. Case of the corporation of *Wickham*, *M. 27 Ch. 2. 3 Keb. 540*. On a motion to confirm a tax laid, by the Justices, upon a toll of the corporation of *W.* for a rate to the poor. *Hale*, Chief Justice, said, that on a reference to him, he was of opinion that the toll was chargeable, though part of it was to maintain the Mayor, and a *Mandamus* was granted to the Mayor and Justices to execute the order, *nisi*.

54. 3 *Ja. 2. Comb. 62*. It hath been lately resolved that ground rents are liable to the poors rate. But see *pl. 66*.

55. Stock in trade, and the house wherein the stock is kept, and may be both rated to the poors tax, and this shall not be held a double tax, but if the land is taxed, the stock upon it cannot be taxed also, for this will be double. *Vin. Abr. title Poor 426*.

56. *Anonymous, E. 1 Ann. 2 Salk. 526*. Hospital lands are chargeable to the poors rate, for no man by appropriating his land to an hospital can exempt them from taxes to which they were before liable, and throw an additional burthen upon their neighbours. By *Holt* Chief Justice.

57. *R. v. Inhabitants of Barking, Vin. Abr. title Poor 426*. A farmer shall be taxed for his riches and stock, in case the stock is more than is necessary for the carrying on his farming and paying his rent; for then it is like a stock in trade; but for stock necessary to his farming he shall not be taxed. So for extraordinary stock he shall not be charged, if it be not more than is necessary; for the act says (every inhabitant, &c. and of land) so that there may be an inhabitant that is not an occupier of land, and he must be charged in respect of his personal estate and ability, and so it is usual to tax clothiers, &c. resolved by three Justices against the Chief Justice. *N. B.* Those farmers were never taxed before, nor were the tradesmen ever before till within these few

* It was resolved, *H. 10 G. 3*. That a stipend payable to a schoolmaster was clearly within the exemption of the land tax act, and therefore not liable to the land tax.

years

years, and the order above was for rating the farmers for the corn and hay, which was in their barn and stable. See *Pl. 48.*

58. *Tracy v. Talbot*, T. 3 *Ann.* before *Holt* Chief Justice, at *Nisi prius*, 2 *Salk.* 531. *H.* took part of an house in the parish of *D.* on the 3d day of *December*, and was rated as an inhabitant, and was distrained for a quarter's rate due the *Christmas* following. But the distress was taken before *Christmas*, on a general warrant for the whole year, and in replevin upon evidence it was ruled by *Holt* Chief Justice, that if two several houses are inhabited by several families who make and have but one common entrance or avenue for both, yet each house continues rateable severally, and if one family goes, one house is vacant. If one tenement be divided by a partition, and inhabited by different families, viz. the owner in one, and a stranger in the other, these are several tenements severally rateable while thus severally inhabited. 2dly, That *H.* could not be rated for the whole quarter, for that by the statute poors rates are to be assessed monthly. If it were otherwise, a person could not remove in the middle of a quarter without paying the poors rates twice. 3dly, That *H.* could not be distrained upon by virtue of a general warrant made before the rate, but there ought to be a special warrant.

If two several houses are inhabited by two families, they shall be rated separately, tho' they have but one entrance.

Stevens v. Evans.

See 43 *Eliz.* c. 2.

See 17 *G. 2.* c. 38. s. 12.

N. B. It was said, that a warrant to distrain for a poors rate ought not to be granted before demand made; for the first ought to be only a confirmation of the assessment for the poor; and then upon refusal, &c. a new warrant is to be made to distrain, &c. and *Holt* Chief Justice said that strictly it was so, but the practice in these cases having been to grant such a conditional warrant to distrain, *communis error facit jus.* *East-India Company v. Skinner*, T. 7 *W. 3.* *Comb.* 342. And it was held in *Charlwood v. Best*, 1748, that a warrant may be made to distrain, before the time for which the rate is made is expired. *MSS.* See *pl. 70.*

See *pl. 86.*

Distress warrant may be made before &c.

59. *R. v. Bartlett*, E. 7. *Ann.* *Vin. Abr.* title *Poor* 427. A parson who lets his tithes to the parishioners may be taxed to the poors rate, for the letting is but an agreement with the parishioners to retain the tithes, and the parson here has a *Modus* for his tithes, though it was objected that the parishioners were occupiers, and so the parson not taxable.

Parson letting his tithes to the parishioners chargeable. See *pl. 46.*

60. *R. v. Skingle*, T. 4 *G. Stra.* 100. The 43 *Eliz.* c. 2. charges lands, tenements, tithes, &c. to the poors

rate. By a private statute for erecting workhouses in Colchester, the poor are provided for in another manner, and occupiers of lands and tenements are made chargeable; and after a rate, an appeal is given to the sessions. The defendant was parson, and being rated for his tithes, appeals, and because the word *tithes* was not in the act of parliament, which the sessions looked upon as an absolute repeal of the 43 Eliz. *quoad Colchester*, therefore they discharge him: *Et per curiam*. He ought not to be exempted but by express words, being liable before. Here is an occupier of a tenement; for tithes are a tenement. 1 Vent. 173; 2 Lev. 139, Lutw. 1563, 1 Inst. 6. Dy. 83. Litt. § 647. 32 H. 8. c. 7. Co. Lit. 159. Cro. Jac. 301. 2 Inst. 625. Wherefore the order of sessions was quashed. Powell and Bull. C. B. This question determined in the same manner.

If the parson lets his tithe to a farmer, the tenant of the land is not chargeable.

61. R. v. Lambeth, T. 8 G. Stra. 524. The person who farms the parson's tithes, agrees with the tenant of the land, that in consideration of his paying so much he shall retain the tithe, and gather in the whole crop without dividing. The sessions discharge the lessee of the parson, and tax tenant of the land to the poors rate, *Per Cur.* The farmer of the tithes is *prima facie* liable to the poors rate, and unless he can throw that charge upon another, the tax must be laid upon him. The tenant of the land in this case cannot be said to be the occupier of the tithes, for he is either a person who buys the tithes, or else he is to be considered as a person excused from paying any. Though the parson may think fit to excuse a parishioner, certainly in point of law he still remains occupier of the tithes. This agreement being only by parol, cannot enure as an under lease of a thing that lies only in grant. If the vendee grubs up underwoods which he has bought standing, he does not become the occupier; but if the tenant sells the whole crop standing, will that make him less the occupier of the land? We must take this tenant of the land to be like any other purchaser of the tithes, since he has no more title to them than any stranger whatsoever. When the parson or his farmer receives a sum of money in lieu of tithe, that is in law a receipt of the tithe. In the case of a composition (as this is) or a *Modus*, it was never thought, but that the parson was chargeable as occupier of the tithe, there being no colour to charge the tenant of the land. The order must be quashed. 8 Mod. 61.

62. *Theed v. Starkey*, M. 11 G. 1 Mod. 314. Covenant against an executor, for not paying taxes, according to a covenant in a lease made by the testator, wherein he covenanted with the lessee to pay all the taxes on the land demised; the breach assigned was for not paying the rates to the church and poor. But upon demurrer, it was objected, that the breach is not well assigned, because those rates are personal charges, and not on the land; and for this reason the defendant had judgment. Cited, *Fol.* 15. And in *Case v. Stephens*. It is said to be a tax in respect of the land, but not on the land, nor payable out of it, for the personal estate only is subject to it; from *Fitzgib.* 298. Poor rate not a tax on the land.]

63. On a motion to quash a poors rate made at the quarter sessions in *Marlborough*, because it was assessed for trade, and the corporation would not assess the toll of their market or their own lands, and they would not hear at their sessions. *Per Cur.* It will be inconvenient to quash poor rates. But you may take a *Mandamus* to assess you according to law, as in the case of the town of *Cambridge*. *Vin. Abr.* title *Poor* 426. See pl. 33.

64. *Anonymous*, H. 1 G. 2. *Poor Sett.* Pl. 169. Question was, whether an house converted into a conventicle, and used for no other purposes, is rateable to the poors tax. *Per Cur.* Never knew it, let them shew cause: And afterwards the order was quashed. Court of B. R. does not favour quashing poors rates.

65. *Ayr v. Smallpeace*, 24 G. 2. MSS. Trespass against *Smallpeace* and five others. They plead the general issue, according to *Jac.* 1. And it appeared on trial, that they were churchwardens, &c. of *Chelsea*; and the question was whether some officers who had lodgings in the hospital were rateable to the poor. Verdict for the plaintiff, and case made for the opinion of the court. The Judges held that they are rateable—determined also that a suggestion was proper to be entered on the roll, and the defendants intitled to double costs. Conventicle not rateable.

66. *R. v. Vandewall*, E. 33 G. 2. 2 *Burr.* 991. The only question was, whether the lord of a manor, is assessable to the poor rates, by the 43 *Eliz.* for the quit-rents, heriots, and casual profits of his manor. It was insisted by the counsel for the defendant, that they were not, any more than ground rents are, that quit-rents having been already rated to the full, in the hands of their respective occupiers, it would be to rate them doubly; that the casual profits being quite uncertain, Officers of an hospital are rateable. See pl. 62.

Quit-rent and casual profits of a manor not chargeable, but ground rents are.

* I cannot find any case in which this has been so determined. See contra. pl. 54.

tain, cannot be considered as that sort of fund out of which the poor are to be supported. And the court resolved that the quit-rents, and casual profits of the manor are not rateable to the poor's tax.

67. *Governor and Company for smelting lead, &c. v. Richardson et al.* M. 3 G. 3. Bur. Mansf. 1341. This was an action of trespass, for taking goods by way of distress, tried in *Cumberland*, and a verdict for the plaintiffs subject to the opinion of the court upon a case reserved: The state of which was long, but the question contains all that is necessary to be reported. It was, "Whether the Plaintiff's lessees of certain lead mines in the parish of *Aldstone*, in the county of *Cumberland*, rendering as rent a certain part of the lead ore gotten thereout, were liable, in respect of the said lead mines, to be rated to the relief of the poor." The court and counsel agreed, that it must be determined upon the general question, Whether lead mines are rateable to the relief of the poor. Lord *Mansfield* said, that this was a very extensive and general question, with regard to the property of many persons in the kingdom, and would have it argued again; and he wished that the fact of rating even coal mines may be inquired into. If they be not always rated, it must arise from some other reason than the construction of the act of parliament. Mr. Justice *Wilmot* mentioned an act of parliament, made in same reign, 31 *Eliz. c. 7.* when the legislature speak of any mineral works, coal mines, quarries, &c. *Uterius Concilium.* N. B. The certificates procured, subsequent to the foregoing argument, tended in general to shew, that it was not the usage to tax lead mines. Lord *Mansfield* now, upon a second argument, stated the question for the observation of the bar to be this, "Whether the plaintiffs, who are lessees of lead mines within the parish of *Aldstone*, who pay no rent, but only a certain part of the ore raised, are liable, in respect thereof, to be rated to the relief of the poor." Lord *Mansfield* prevented Mr. Solicitor General from replying, for the case was two plain to need it. He stated the question as above, and observed, that the words of the act of 43 *Eliz. c. 2.* are coal mines, not mentioning any other kind of mines; and that is equal to an express exception or exclusion of all other mines; for coal mines are not lead mines, tin mines, copper mines, iron mines, or any other but coal mines, and there were at that time other mines in the country.

These other mines are governed by particular laws; the worker of them is not always the owner of the soil; the particular laws of them give the right of working (under certain regulations and conditions) to other persons than owners or lessors, or persons having any right of property in them. This alone might be a sufficient reason to except them out of this act of parliament. And as there may be a reason for the strict letter of the statute, and none appears for extending it beyond the letter, we have no ground or authority, or pretence, for giving it that extensive construction, nor is there any foundation for imagining that the legislature meant so. And the fact upon certificate (though the certificates do not exactly concur upon every particular) appears to be, "that lead-mines are not rated throughout England, and particularly in *Derbyshire, Somersetshire, and Cornwall;*" and my brother *Adams*, who was desired by us to inquire, gives the same account upon his return from the western circuit, with regard to the tin mines in *Cornwall*. I am now keeping clear of inhabitancy, which is no part of this case; for these persons are not rated as inhabitants, but only as lessees. Therefore the *possea* ought to be delivered to the plaintiff. Mr. Justice *Denison* concurred—Lead mines and coal mines essentially differ as to the expence of finding, though not so much in the expence of working. There is infinite expence and uncertainty in finding lead mines; they are governed by particular laws, and the finder is obliged to pay certain proportions to the owner of the land. Therefore it is reasonable that lead mines should not be put upon the same foot with coal mines, because there, there is so much greater risk in the search after them, even so much that a man may be ruined by it instead of succeeding. The legislature have not in this statute mentioned lead-mines, but only coal mines, and *expressio unius est exclusio alterius*, there is no reason to think they meant to include them. Therefore this case is not within the words or meaning of that act. And I think this is confirmed by the act of 31 *Eliz. c. 7.* against the erecting and maintaining of cottages, which excepts "cottages for the habitation of workmen and labourers, in any mineral works, coal mines, quarries, &c." So that when they had it in contemplation, they specified them particularly. Therefore I am clear that this act of 43 *Eliz. c. 2.* does not extend to lead mines. *Per Cur.* Let the *possea* be delivered to the plaintiffs.

POORS RATE.

68. *R. v. Occupiers of St. Luke's hospital, M. 1 G. 3. Burr. Mansf. 1053.* Order of sessions for *Middlesex* states, that an appeal had been made from an article in the poors rate for the parish of *St. Luke*, made in the year 1757, which article is as follows, *viz.* Occupiers of a messuage and tenement and premises, called *St. Luke's hospital for lunaticks*, rent 80 *l.* rate 2 *l.* 13 *s.* 4 *d.* for a quarter of a year. And it appears in evidence to this court, that by indenture made in 1750, between the corporation of *London* on the one part, and *A. B. &c.* the ground on which the hospital was built, and some buildings at the time of the demise standing thereon, was demised for the purpose of erecting an hospital for lunaticks, for the term of 32 years, yielding a rent, with covenant to apply the whole or part of the premises to the purpose of an hospital for lunaticks, with clause of re-entry in case of nonpayment of rent, or if the premises shall be converted to any other use than that of the charitable design for poor lunaticks. It appears likewise in evidence unto this court, that before erecting the said hospital, divers, *to wit*, twenty-nine houses, were situate upon the land and premises in and by the said indenture contained and demised, and that by the several rates made by the overseers of the poor, for the relief of the poor within the said parish of *St. Luke*, for, in, and during the several years, between the year of our Lord 1744, and the date of the indenture herein before mentioned, the said twenty-nine houses were valued and estimated at the annual value of 196 *l.* by the year; and that in the year of our Lord 1745, the said twenty-nine houses being assessed, in the rate made in the said year for the relief of the poor, within the said parish of *St. Luke*, after the rate and proportion of three shillings in the pound sterling, did yet pay and yield no more to the said overseers, in satisfaction of the said rate, and towards the relief of the poor than ten pounds and one shilling; and that in the year of our Lord, 1746, the said twenty-nine houses being assessed by the overseers of the poor of the parish of *St. Luke*, in the said last mentioned year, for the relief of the poor within the said parish, after the rate and proportion of three shillings in the pound sterling, did yet pay and yield no more to the said overseers, in satisfaction of said rate, and towards relief of the poor, than 8 *l.* 11 *s.*; and that in the year of our Lord 1747, the said twenty nine houses being assessed in the rate, made in the said

said last mentioned year, for the relief of the poor, within the said parish of St. Luke, after the rate and proportion of 3 s. 3 d. in the pound sterling, did yet pay and yield no more to the said overseers, in satisfaction of the said rate, and towards the relief of the poor, than 8 l. 14 s. 9 d.; and that in the year of our Lord, 1748, the said twenty-nine houses being assessed (*ut supra*) after the rate and proportion of 3 s. in the pound sterling, did yield, *ut supra*, no more than 7 l. 1 s.; and that in the year of our Lord 1749, the said twenty nine houses, being, &c. after the rate and proportion of 3 s. &c. no more, &c. than 6 l. 3 s.; and that in, &c. 1750, the said twenty-nine houses being assessed (*ut supra*) after, &c. of 2 s. 9 d. in the pound sterling, did yet, &c. no more, &c. than 2 l. 8 s. 9 d. It appears also in evidence to this this court, that the premises demised were accordingly built and converted into the hospital, mentioned in the said article of the rate in question, called St. Luke's hospital for lunaticks, for the affording a charitable and free sustentation and cure to poor and helpless lunaticks, and that every appartment and parcel of the said premises, so built and converted into such hospital as aforesaid, is laid out and applied, either in wards or cells, for the lodging of such lunaticks as aforesaid, or in offices necessary for their sustentation and cure, or in appartments necessary for persons who are hired from time to time to attend on such lunaticks for their better sustentation and cure, and in no other appartments or buildings whatsoever; and that the said edifice was originally erected, and still is supported, and many very poor and helpless lunaticks have been, and still are sustained and taken care of therein; and the menial servants attending upon such lunaticks, have been and still are hired and paid, and all other expences relating to and necessary for maintaining the said hospital and charity, have been, and still are, from time to time defrayed and borne by the free and voluntary contribution of divers persons, out of whom a committee annually is appointed, who meet weekly to order the admission and discharge of patients, the hiring and retaining servants, the payment of bills, and the regulation of all other matters relative to the maintenance and upholding of this charity, and that none but such poor and helpless lunaticks, and the persons necessarily attending upon them, have any kind of dwelling or occupation in the said hospital. And that one Joseph Mansfield (the appellant) is the principal person hired from year to year, by the said committee of contribution, and receiving cer-
tain

tain wages, and living in the said hospital for the purposes of attending on the said lunatics, and having no other abode, occupation, or establishment therein; and that the said *James Sperling*, *Henry Banks*, *Richard Speed*, *Thomas Light*, and *William Prowling*, or any of them, their, or any of their executors, administrators or assigns, have not, nor ever had, or can have any profit, benefit, or advantage from the said premises, or any part thereof, nor any possession or occupation thereof, otherwise than as aforesaid. This court, the general sessions at *Hick's Hall*, upon consideration of the circumstances above set forth, is of opinion, "That the said tenement called St. *Luke's* hospital, ought to be assessed and rated towards the relief of the poor, by the said rate; and doth accordingly demise the said appeal, and confirm the said rate." Lord *Mansfield* now delivered the opinion of the court, having first stated the order and the objections taken to it: Cases of this kind depend upon the particular nature of the respective hospitals; each stands upon its own distinct circumstances, therefore no general consequences will arise from the determination of this particular case. The land tax differs from the poor's tax; the landlord who receives the rent is to pay the land tax, but the poor's tax is payable by the occupiers; therefore the rating hospital lands to the land tax is not applicable to the present question. The occupier ought to be rated regularly by name; but in the present case, it is more than than a mere defect in form. The fault in form here arises from the essence of the thing; for if they cannot fix upon some particular person, who may properly be rated as occupier of this building, it follows as a necessary consequence, that no rate can at all be made upon it. As to the argument that has been urged in support of the order, "That a proprietor of lands or houses cannot, by his own private voluntary act, discharge such his property from payments legally due, to order persons upon and out of it"—It does not hold true in fact; for this rate payable to the parish, as well as several other payments arising from property, and chargeable upon it, do and must depend upon the will of the proprietor. The owner of a house may, if he pleases, pull it quite down and convert it into a toft. The owner of lands may, if he pleases, suffer them to lie barren and unoccupied. Tithes, and the right of them, vary according to the different species of the produce of the land; yet the landholder may sow

sow it, or plant it, or use it in the manner he likes best, or even not at all, if he so chooses. The material question in this case is, Who can be named and charged as the occupier? There are only three sorts of persons that occur to me. If they can find any orders, who may be properly charged as occupiers, such other persons will not be included in or effected by the opinion which we now give. The only persons that I can think of, are, 1st, The five lessees. 2dly, The servants attending this charity; and, 3dly, The poor mad persons who are the objects of it. First, As to the lessees—Mere nominal trustees cannot be esteemed occupiers, or rated as such. Besides, these lessees are expressly excluded by a special proviso inserted in the lease, from converting the building to any other than this special use, and the lease is to determine and become void if they do. They are so far therefore, from being occupiers of it, that they are merely nominal, mere instruments of conveyance, and have no more interest in the thing than the crier of the court of Common Pleas has when he is named as the last vouchee in a common recovery. Secondly—As to the servants attending this charity; they are not in a like situation with the officers of *Chelsea* hospital, or of the other charitable foundations that have been mentioned at the bar, where there are large distinct apartments appropriated to the use of the respective officers, wherein they and their families reside. Those officers are not charged as servants of such hospitals, or as inhabitants and occupiers of the ordinary rooms and lodgings therein, but as having separate and distinct apartments, which are considered as their dwelling houses. The cases that have been determined by the judges, relating to the window tax, are uniform in rating officers of hospitals for their distinct apartments; but in this hospital there are neither any such officers, or any such apartments as were in those cases determined to be rateable. In the first of these orders, which rated *Joseph Mansfield* as the occupier of the hospital, if it had stood as it was originally drawn up, without being afterwards altered, and if *Mansfield* had actually had a separate and distinct apartment in it, which is not now pretended, yet certainly he could not have been rated for any thing more than his own distinct apartment; however, that matter ceases now to be any part of the case, there being no foundation by the new order to ground such a question upon. 3dly, As to the poor miserable wretches who are the unhappy objects

of this charity, it would be too gross to conceive them to be proper persons to be rated to the relief of the parish, therefore it is unnecessary to say any thing on this head; and the rather, as it appeared so very reasonable to the counsel themselves, who argued in support of the order, that they gave it up. And if no person can be found who is rateable to this tax, it follows, by necessary consequence, that there can be no rate at all. Therefore the order must be quashed.

* 68. *R. v. Shalfleet*, T. 8 G. 3. The case states, that *John Sherrington*, the appellant to the rate, inhabits a tenement in the parish of *Shalfleet*, and is officer appointed by his majesty's commissioners of the office, for the purpose of superintending the salt works, carried on in the parish aforesaid, for which he receives the salary of 40 *l. per annum*, by monthly payments from the government, and is removable by the commissioners at pleasure; that the salt works which he superintends, have been and are assessed, both to the land tax and poors rates, and have constantly paid such assessments; that it appears to the court of sessions, that such officers have been assessed, and have paid to the land tax; but it did not appear that before this time they were ever rated to the poor; and that said *Sherrington* is rated to the poor the sum of 3 *s.* 10 *d.* for his salary only. The court of sessions determined, that he was not rateable for his salary, therefore quashed the rate. To support the order of sessions, *Thomas*, attorney general, and Mr. *Thurloe*, agreed, that the statute of *Eliz.* directs the overseers to raise a sufficient stock upon the inhabitants and occupiers of tithes, coal mines, and that every one is to be rated for what he possesses, and not for what he has; as if a man make three rents, he shall not be rated according to them; the rate must be for such property as is fixed and permanent, and not for what he receives one day and consumes the next. Mortgages are not rateable. The earnings of trade or labour, the salaries of a curate or gentleman's steward are not rateable. Stock in trade has been taxed, as it is something which a man has, as permanent personal property. But here the commissioners may remove the officers, and appoint others immediately; besides, as no place is fixed for the payment of it, it may be, it is paid in *London*, and therefore is not parochial property, and as it is payable out of the salt duties, the public would in effect pay it; for the government must raise the salaries in proportion to the deductions. The land tax act expressly includes offices and stipends, but

but does not subject them to poor rates; which proves, that the legislature did not consider them as proper subjects for taxation to the poor.—The profits of office are not visible ability, which it should be, to be rateable. And, *Bulst.* 254. Quit rents and heriots are rateable to the land tax, and are not to the poor rates; that usage and practice had prevailed against the present rate. On the other side, it was insisted by Sir F. Norton, and Mr. Dunning that the court would give the most liberal construction to, the act which was to provide relief, and such as should best answer that purpose, by creating proper funds. That whoever was an inhabitant, and had personal property, was rateable to the poor. The land tax proves the legislature considered them as of sufficient ability who had offices and stipends, and as having permanent property, by obliging them to contribute to the land tax.—That every person is rateable for his personal property, in the parish where he lives, wherever the property lies. As if a man has money in the funds, and lives in *Yorkshire*, he shall be rated for it in *Yorkshire*; and these offices are rated to the land tax where they live, and not where the money lies. But it was never argued before, that a man is not rateable for his property in that place where he lives, because he does not receive it there. As to the usage of its not having been rated before, in the *Isle of Wight*, at *Droitwich*, or *Nantwich*, nor been customary at *Bristol*, to rate the glass officers, makes no difference; for in the case of *Chelsea* hospital, the officers had never before been rated, and though they are not rated under the denomination of their salary, yet that is included and taken into consideration, in the rate made upon them.—The case of *Vandepui* was cited, to prove non usage of consequence; but the case was not determined, nor went upon that ground; markets and fairs have been held to be taxable, and by the exposition of the legislature, salaries and stipends too, for it has made them rateable to the land tax. And, why therefore, if it be sufficient property to be the object of the land tax, is it not so to the poor? *Vandepui's* case went upon the question, Whether the property, though permanent, would produce any profit? but here the property and the profit are certain, and nothing uncertain but the interest the person shall have included; if he be rated for more than a month, or longer than he continues in office, he may appeal and be relieved, but whilst he does continue he is rateable. It was argued not to be

visible property; by visible was not meant tangible, but so far visible, that the parish officers can get a competent knowledge of, and which they can assess in their rates; that the apartments of *Chelsea* hospital are taxable, and yet are the fruits of office, as much as money, or any other profit or advantage. Lord *Manisfield* delivered the opinion of the court, a few days after the argument, viz. This being a case of general and extensive consequence, we took time to consider of it, though I had no doubt upon it. The man is rated for his salary, which is a specific species of property, which is not within the words or meaning of the act. Tithes, coal mines, &c. are within the words of the act, and nothing is within the meaning of these words but personal property, and personal property is the surplus of a man's estate and effects, after payment of debts, the maintenance of his family, and necessary expences. This is not stated to be personal property; but the man is stated to have been rated for a specific thing, his salary only. The earnings of servants, fees of profession might as well be rated. We are therefore of opinion, that this is not property within the intention of the act, nor is it lying within the parish. The order of sessions confirmed and the rate quashed.

The governors
pull'd down
nineteen houses
to make an area,
and were assessed
for those houses.

69. Case of the governors of *St. Bartholomew's* hospital, *T. 9 G. 3.* *St. Bartholomew's* hospital was dissolved in the time of *H. 8.* who granted in the 30th year of his reign to the mayor, &c. of *London*, all the late hospital of *St. Bartholomew*; and directed, that it should thereafter be used for the poor; and that all the said hospital should be part of the parish of *St. Bartholomew's the Less*, and did incorporate the parsonage house and parish church of *St. Bartholomew's*, with all tithes, &c. to the mayor, &c. for their own use. After the fire of *London*, several houses and shops were built in the hospital for the convenience of the citizens of *London*, and the inhabitants thereof were then first charged to the poors rates. In 1730, the old building of the hospital, and some of the said houses and shops were pulled down, in order for rebuilding the hospital, and there has since been erected an elaboratory, and four large piles of buildings; one of which contains an hall and other rooms and offices, necessary for the meeting of the governors, an house for the clerk, and an apartment for the steward: The other three are used for wards for the poor and their nurses only. In 1745, the officers of the hospital were first charged

charged to the poor's rates, which have been paid ever since. In 1757, the fourth pile was erected, and has been charged to, and paid to the poors rate ever since. In 1766, the quadrangle being completed, the governors pulled down nineteen houses to make an area for the said building. The governors were now charged to the poors rates the same money for the area which had been paid for those houses; from this rate they now appealed. By the court; the governors cannot be considered as the occupiers of any part of the hospital, and as they can be chargeable to the poor in no other capacity, this rate must be quashed. Mr. Justice Yates: Before the 43 *Eliz.* c. 2. no persons could by law be compelled to contribute to the relief of the poor, and persons are now compellable by that statute only, which enacts, that every inhabitant and occupier of lands, &c. shall be taxed. Now a corporation which is a body in contemplation of law only, which cannot be seen, or do any act but by attorney, cannot be an inhabitant or occupier of lands. The statute, which gives a right to inspect rates, gives it only to inhabitants; none therefore can be charged, but what may be inhabitants. Rate quashed.

denied in R. v. Gardner & al. judged cont. B. R. 5. 1493.

* 69. *R. v. Justices of Canterbury, M. 9 G. 3.* Mr. Solicitor General and Sir F. Norton, moved for an information against the Justices of *Canterbury*, for not rating personal property throughout the town, when it appeared, that they had rated the rectors and vicars for their tithes, and for refusing a special case, to take the opinion of the court of *K. B.* The only ground upon which it was contended that they were criminal was, that the act of parliament directs personal property to be rated, and they were therefore bound to rate it, and offended against the law in not doing it. The information was refused; but *Ld. Mansfield* said, To be sure personal property is within the act of 43 *Ed.*; and yet it is almost impossible to rate it, for it would be compelling persons to discover their debts. The other three judges declined giving their opinion, whether personal property, or stock in trade is rateable; but all concurred in discharging the rule, but granted a rule for a *Mandamus*. In *H. 9 G. 3.* Motion for a *Mandamus* was made, to direct the Justices of *Canterbury* to rate personal property. Upon shewing cause, the rule was discharged. The whole court, except *Ld. Mansfield*, who was absent, declaring, that personal property seemed to them not

rateable ; but that they did not mean to give any opinion ; as the rule could be discharged on other grounds.

Of levying and distraining for the Poors Rate.

70. *Edgcombe v. Sparkes*, T. 32 C. 2. 2 Show. 126. Working tools in a shop, may be distrained for a poors rate.

71. *Tr. Term*, 7 W. Holt Ch. J. ruled, that money might be distrained for a poors rate. *Comb.* 342.

Warrant directed to the constable of A. to levy a poors rate of S. whose house stood in B. See pl.

72. *Hampton v. Lammas*, 10 W. 3. *Coram Holt Ch. J.* at *Nisi prius*. *Ld. Raym.* 735. Justices of Peace made a warrant to levy a poors rate of *7. S.* which was directed to the constables of the parish of *A.* *7. S.* had land in *A.* upon which he had no chattels, but his house, in which he had goods, stood in the adjoining parish of *B.* in the same county ; the constables of *A.* levied these goods, by virtue of the said warrant ; and *Holt Ch. J.* ruled upon evidence at the assizes at *Hertford*, that the goods were well levied. *Ex relat.*

Mandamus to sign warrant of distress, which they had refused to do, alledging that it had been customary to issue summons first.

73. *R. v. Justices of Middlesex*, E. 19 G. 2. Motion for a *Mandamus* to the Justices of *Middlesex*, to sign a warrant of distress, for levying a poors rate, upon persons refusing to pay the same. Upon shewing cause ; it was set forth in the affidavit, to have been the custom not to grant warrants without first summoning the party to shew cause, and that they had refused to grant any warrants of distress, without first summoning the party. *Lee Ch. J.* A writ of *Mandamus* will not give the Justices any power they had not before, and therefore it is to be considered what power the act 43 *Eliz.* gives them ; and in that there is no direction, that the party shall be summoned to shew cause. Nothing appears upon the affidavits that this is such a rate as a distress ought to be granted upon ; but the whole is, that persons applying for the warrant, did first refuse to take out a summons, which to me does not appear a sufficient cause why the *Mandamus* should not go ; if the Justices have sufficient reason why they did not grant the warrant, it will appear upon the return of the *Mandamus*. *Wright J.* No doubt the court will grant a *Mandamus* to the Justices to do what by act of parliament they ought to do. If we grant a *Mandamus*, it is determining the question, that the Justices should grant a warrant of distress, without summoning the party, though the act of parliament did not require it.

in exprefs words. *Denison J.* It is sworn by the affidavits, that it is the custom of the parish to grant a summons first. The only question here is, Whether this is a sufficient cause for the court not to grant a *Mandamus*? which I think it is not by any means; and if the Justices think this is a sufficient cause, they may shew it upon the return. *Foster J.* I think, for the same reason that the court grant a *Mandamus* to sign and allow a rate, they ought to grant it to sign a warrant of distress, which is to make an effectual rate. The *Mandamus* was granted.

74. *Hutchins v. Chambers, & al'* E. 31 G. 2. Burr. Mansf. 579. This was a special case from *Surry* assizes, before Lord Ch. Just. *Willes*. It was an action of trespass against the Justices of Peace, the parish officers, the constables, and their assistants, for executing a warrant of distress made by these two Justices upon a poor rate, amounting to 13 l. 2 s. and a verdict was found for the plaintiff against all the defendants, subject to the opinion of the court, upon the whole matter. The distress first taken was five geldings, stated to be beasts of the plough and cart, with their halters. Which first distress not being found sufficient, they distrained a second time under the same warrant, and took three other geldings, which were and are stated to be also beasts of the plough and cart of the value of 36 l. 17 s. with their halters. It is expressly stated, "tha: upon the former distress there were other goods, &c. more than sufficient to answer the value of the demand, besides those beasts of the plough." This case was first argued on the 13th of January, 1758, by Mr. *Knowler* for the plaintiff, and Mr. *Gould* for the defendant; and again, on Friday the 14th of April 1758, by Mr. *Stowe* for the plaintiff, and Mr. *Williams* for the defendant. There were five questions stated, for the opinion of the court, viz. 1st. Whether the rate and assessment was a good and sufficient rate and assessment in point of law? and if not, then, whether the plaintiff can command himself of any obligation to it? Second question, Whether the warrant ought to have fixed and limited the time within which the geldings and goods distrained were to be sold, and whether for want thereof the warrant is void, and the defendants, or which of them, are trespassers? Third question, Whether the second distress is at all justifiable? Fourth, Whether the geldings, being beasts of the plough, and used by the plaintiff both for the plough and cart, were

liable to be taken and distrained for the said rate and assessment? Fifth question, Whether, upon the whole state of the case, the plaintiff's action is maintainable against the defendants, or any, and which of them? And a Sixth question, Whether the second distress was not excessive; arose upon the argument? After the first argument, in which the distress was treated as a common law distress, and Mr. *Knowler* expressly denied it to be an execution, because it was repleviable; and insisted that the statute *de districtione scaccarii* in general is declaratory of the common law, and extends to all distresses for any cause whatsoever. Lord *Mansfield*, finding that the parties proposed speaking to it again, took notice, that all about the rates is out of the present case, for if they are bad, the parties who thought themselves aggrieved, should have appealed. So all about the warrants may be laid out of the case; for the warrant is not void, so as to make it a trespass *ab initio*, therefore the future arguments may be confined to the other objections. This case now standing in the paper, for the resolution of the court: Lord *Mansfield* delivered their opinion. The rule of *nisi prius* is so conceived, as to submit the case to the opinion of the court, be whatever it may, and so as to obviate all objections to the form of pleadings, and finding of the verdict. In stating the case he observed, that there were other things which might have been taken upon the first distress, besides those which were actually distrained; but not upon the second, from any thing that appears. Upon the first argument, the two first objections were laid out of the question, especially since the 17 G. 2. c. 38. so that the justices were out of the case, for a defect in the rate (unappealed from) and could not avoid the warrant, nor is the warrant void so as to make it a trespass *ab initio*, and the Justices could not be trespassers by what the officers afterwards did. That it was reduced to three questions, *viz.* First, Whether upon the first distress *averia carucarum* could be taken and distrained for a poors rate and assessment, when there were other things that might have been distrained, and which were more than sufficient to answer the value of the demand? The second question turned upon the two objections to the second distress, *viz.* First, Whether the second distress under the same warrant, was at all justifiable, when there was enough that might have been taken upon the first? And secondly, Whether this second distress, being excessive, that circumstance alone was
not

not a sufficient ground to maintain this action of trespass, independent of any other consideration. On the second argument, Mr. Williams not only argued very well as counsel for his client; but he explained the whole learning of distresses at common law which were a *termina pena*, not a satisfaction. As I adopt the reasoning of his argument throughout, to avoid the repetition, now I will in great measure refer to it for the ground of the opinion which the court is of.—The first question is, Whether *averia carutæ* may be taken for a distress upon the poor's rate, where there are other distrainable goods sufficient. As to this, the solid distinction is, "That the seizing under the 43 of *Eliz.* and such like acts of parliament, is but partly analogous to the common law distress, (as being replevable, &c.) but is much more analogous to the common law execution, (like a *fieri facias*, where the surplus after sale, shall be returned.)" In the old common law, distresses which were in nature of *termina pena* to compel payment, it would have been absurd to have suffered the implements by which a man gained his livelihood, to be holden as a pledge, because that would have been taking from the man, the only means he had of being able to pay the debt; but this reason don't hold, where the things distress'd may immediately be sold, by way of satisfaction; which, though called a distress, yet really is in this respect an execution. *Vinkensterne* and *Elden* M. 10 W. 3. Lord Ch. Holt says, it is true, a horse cannot be distrained in a smith's shop, &c. but there is no such restriction where the distress is for a personal duty; and he observed, that the duty in that case arose out of the goods laden to be exported, so that by their being laden the duty commenced, and the ship became chargeable, and *a fortiori* any part of her. I take the meaning of what he there says of personal duties, to be applicable to the case of parliamentary duties, alluded to in 3 *Salkeld*, and consequently to be agreeable to 3 *Salk.* 136, which says it was adjudged, "That this common law exemption of utensils, tools, instruments of husbandry, &c. from distress, holds only in distresses for rent, arrears, amerciaments, &c. but doth not extend to cases where a distress is given in the nature of an execution by any particular statute, (as for poor rates.)" Therefore it is more analogous to an execution than to a distress at common law, and there (in cases of execution)

averia carucae may be distrained; although there be other sufficient distress. And on this ground we are all of opinion, that there is no objection to the first distress, from the *averia carucae* being taken; for that they are distrainable under the 43 *Elix.* and such like acts of parliament. Thus far relates only to the first distress. As to the second distress: The first question relating to that is, "Whether the second distress can be at all justified, as it was a second distress taken under the same warrant, when enough might have been taken at first, if the distrainer had then thought proper." Now a man who has an entire duty shall not split the entire sum, and distrain part of it at one time, and for other part of it at another time, and ~~take~~ *quities* for several times, for that is great oppression; and that is the case of *Wallis and Savill et al* in 2 *Lutw.* 1532. where the second distress was holden unjustifiable; because both distresses was taken for one and the same rent: and it was the lessor's folly that he had not taken a sufficient distress at first. But if a man seizes for the whole sum that is due to him, and only mistakes the value of the goods seized, (which may be very uncertain), or of even imaginary value, as pictures, jewels, race-horses, &c. there is no reason why he should not afterwards complete his execution, by making a farther seizure; and how can the officer who seizes, judge of the real, or perhaps imaginary value of the horses or goods seized? the value of them may be quite unknown to him, or may even depend upon whim and fancy. It is to the advantage of the defendant that this should be so; it is better for him that the officer should be at liberty to seize a second time, in case he makes an insufficient seizure the first time, or else it might induce him to a necessity of taking effects of a very great value at first; for if he is to be precluded from thus making up the deficiencies he will certainly take care not to take too little at first. Now pictures, horses, jewels, books, and some other such effects, may be of so uncertain and even imaginary or fancied value, that it may be exceedingly uncertain how much money they may produce upon sale. And if he does not take the value of the whole at first, (out of tenderness and moderation, perhaps), there is no reason why he should not complete it by a second seizure, provided it be the same sum due. Therefore this first objection to the second distress fails. Third question, the second objection to this second distress is the third

third remaining question, viz. "its being excessive, and as
 "such being a sufficient ground for an action of trespass."
 "Now, as to this third question, Whether the taking
 an excessive distress is a sufficient "ground to maintain
 "an action of trespass, several authorities have been
 "cited," to shew "that an action of trespass will not lie
 "for taking" an excessive distress; but that it ought to be a
 particular action grounded upon the statute, and particular-
 ly one case, which is in 2 *Strange*, 851. *Lynne and Moody*,
M. 3 G. 2. B. R. where it had been so adjudged in C. B.
 but the judgment in C. B. was there reversed. So that it
 has been sufficiently established, "That a general action
 "of trespass cannot be maintained for taking an excessive
 "distress." One case indeed was recited to the con-
 trary, which was the case of *Moir and Munday*, H. 28
 G. 2. B. R. and that was an action of trespass, where
 six ounces of gold, and a hundred ounces of silver
 were taken for six shillings and eight pence; which
 was holden to be an excessive distress, and judgment
 was given for the plaintiff. But that appeared upon the
 face of it, and upon the pleadings to be excessive, and
 so the court expressly declared; and it was a distress of
 gold and silver, which are of a certain known value, and
 even the measure of the value of other things. But it
 was there holden, "That in all other cases of goods or
 "other things, of arbitrary and uncertain value, it must
 "be an action upon the statute." And this (as I am
 told) was the distinction there taken, and that is there-
 fore an exception, (and was there considered as being so)
 from the general rule, and serves to confirm the rule it-
 self; we are therefore all of us of opinion, that there
 is no cause of action maintainable by the plaintiff in the
 present case; nor has he any right to recover against any
 of the defendants; and that the defendants be at liberty to
 enter a non-suit. The rule taken was, "That the *possession*
 be delivered to, and judgment entered for the defendants."

75. *Stevens v. Evans* E. 1 G. 3. 2 *Burr.* 1152. In
April 1759, [an assessment was made and published for
 the poors tax, in which *W. Vesey* was assessed. In *July*
 following he died intestate, and in the *December* follow-
 ing administration was granted to the plaintiff. In *Ja-*
nuary 1760, two Justices executed a warrant reciting the
 assessment, and whereas it appeared, that the said 9 l. See pl.
 151. had been lawfully demanded of the said *W. Vesey*
 deceased, and of his widow and representative since his
 decease,

Personal repre-
 sentative ought
 to be summoned
 before distrained
 upon.

decease, who have refused and doth refuse to pay the same, it requires the churchwardens, &c. to distrain the goods and chattels of the late *W. Vesey*. By virtue of this warrant the defendants, on the 19th *January* 1760 distrained cattle, which were the property of *W. Vesey* in his lifetime, and at his death, and on the lands occupied by him. The question was, Whether distraining the cattle of *W. Vesey* in the hands of his administrator, by virtue of the said warrant was legal; Mr. *J. Wilmot*: I believe that whatever the law may be, the practice is not to make the rates monthly. I have not the least doubt but that the representative ought to have been convened before the Justices, and asked, why he should not pay the rate assessed upon *Vesey* his intestate. This is like a *scire facias* upon a judgment, upon which execution cannot be sued out against the representatives without asking them why it should not be taken out. At the time of the teste, they were the chattels of the representative. If the teste had been prior to the death, they would have been the chattels of the deceased. If the money had been demanded of the representative, I should have had great doubt whether this distress was not good. For though the rate is a charge upon the person, yet it is so, in respect of the thing occupied: and though he is called an offender, if he refuse to pay it, yet he can be no otherwise considered as an offender, than every other debtor who refuses or neglects to pay his debts, and thereby renders his person and goods liable to be taken in execution, is so far treated as an offender, till he shall comply with the judgment awarded. And I know that these payments by administrators are very often allowed to go in discharge of the assets of the intestate. In a case of *Wallis* administrator v. *Hewit* at the sittings in *Guildhall*, 5 G. before *Ld. Ch. J. Eyre*, two aldermen of *London* had made a warrant to distrain for a poors rate. The man died intestate, but a demand had been made upon him, before the warrant was granted. The *Ch. J.* held that a distress could not be made after his death, or that if it could, his representative ought to have been summoned, and he held the property to be changed. To distrain a man's goods without hearing him, would make strange confusion in the administration of assets; he may have retained or paid judgment debts prior to this distress for the rate. I have no doubt but the plaintiff here is intitled to his judgment; in which Mr. *J. Denison* concurred. Mr. *Burrow* subjoins a note that the law seem

seems to be that the rates should be made monthly, or divided into so much *per month*; but I can't find that it has ever been solemnly determined; on the contrary, motion being made for a *Mandamus* to the officers of *St. George's Middlesex*, to make a monthly rate, *Ld. Mansfield* said, that it seemed full as well to make a rate for three as for one month, and discharged the rule. *E. 10 G. 3.*

Quære whether the rate should be made monthly.

Appeal.

76. Appeal from the poors rate may be to borough sessions, by 43 *Eliz. Port.* 321. See *pl. 77.*

77. *R. v. St. Mary's in Taunton, E. 12 G. 1. MSS.*

General quarter sessions set aside a rate, by Justices in a corporation; and it was objected, that by 43 *Eliz. c. 2. § 8.* a power is given to corporation justices, and that no other Justices enter or meddle with such borough. *Per Cur.* There being negative words in this clause the Justices at the quarter sessions for the county have no jurisdiction, and the order must be quashed.

County sessions or Justices have no authority with regard to rates made in a corporation town which has Justices.

78. *R. v. Inhabitants of St. Giles's, M. 8 Ann. Vin. Abr. Tit. Poor 417.* Upon an appeal from a poors rate the Justices refused to hear the appeal because not made at the next quarter sessions. *Per Cur.* The party grieved may appeal at any sessions, the Justices may not have power to alter the rate at their discretion, but they ought not to refuse to hear the appeal.

See pl. 77. Appeal from poors rate may be to any sessions. Compare the 43 *Eliz.* with the 17 *G. 2. c. 38.*

79. *R. v. St. Hellens in Abingdon, H. 27 G. 2. MSS.* Notice of appeal to poors rate given to churchwardens and overseers, because several persons were left out of the rate—on first day of sessions, churchwardens and overseers refused to attend or produce the rates; the Justices made an order for them to attend the next day, they again refused, and then the court proceeded in the appeal, and read an attested copy of the rate as evidence, and ordered sixteen persons to be inserted, and one to be left out. On a rule to shew cause why this rate should not be quashed, several objections were made; First, that the notice of the first day of the sessions was too late, but over-ruled as it was not notice of appeal, but only notice to produce the rate; Second, that the persons rated should appear to have some rateable stock, and that in the parish; but that over-ruled, as the tithe of the rate was descriptive of it; Third, that 17 *G. 2.* only gives them power to amend the rate so far as to give relief;

Sessions cannot strike out a person from the poor rate; they may insert.

In notice to the churchwardens, &c. they must specify the names of the persons that hath been omitted.

See pl.

but here they have proceeded further, and struck out a person; and as to that the court seemed to think they had exceeded their jurisdiction; Fourth, that in the notice to the churchwardens and overseers, they should have specified the names of the persons that had been omitted, that they might have made inquiry about them and come prepared. As to this objection also, the court inclined to think the names should have been specified, and said, this act of 13 G. 2. gives a jurisdiction to Justices to do what the churchwardens and overseers had heretofore done; and as churchwardens and overseers, in their rate, were to shew that the persons were inhabitants and liable to be rated; so should the Justices in the exercise of their original capacity likewise. *Per Cur. Wright, Denison and Foster.*

Certiorari.

Certiorari does not remove the rate itself, nor will Mandamus be granted to make an equal rate.

See pl.

80. *R. v. Uttxeter, E. 5 G. Str. 932.* Upon great deliberation it was held, that a *certiorari* does not lie to remove the poors rate itself, the remedy being by appeal or by action, when a distress is taken, this will answer all the ends of Justice in coming at an equal rate; whereas if the rate itself should be sent up, great inconveniencies to the poor and delays will follow. See *Poors Sett. 317.* See *Pl.* It was also adjudged, that the rate was not removeable, being only evidence of an assessment, and the allowance by two Justices a ministerial act. *MSS.*

C H A P. III.

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To whom to be delivered, and by whom allowed, *pl.* 81.—Appeal from Overseers Accounts, *pl.* 92.—Payment of Money remaining in their Hands, *pl.* 96.—Protection in this Office, *pl.* 104.—Penalties, *pl.* 110.

81. **O**verseers accounts to be given to two Justices, *See pl.* not to the succeeding overseers, and it must appear in the writ, that those who are to give an account were overseers. 2 *Salk.* 525.

82. The authority of the Justices in stating the overseers accounts at the end of the year, cannot be delegated to any other. *Vin. Abr.* title *Poor*, 415. *E. 9 Ann. V. 43 Eliz. f. 2.*

83. Justices in sessions have no authority with regard to overseers accounts, till allowed by two Justices. *See pl.* *Str.* 983.

84. *R. v. Gibson, E. 1 G. Fol. 29.* The defendant was a churchwarden of *Clerkenwell*, and was committed to *Newgate* by two Justices, for not giving up his accounts. It was objected that it appeared to be a commitment within the year, and that the act 43 *Eliz.* does not direct any commitment till after the year, and also that the Justices only say that he had not accounted before them, whereas he might have accounted before other Justices, which would have been sufficient; and both objections being allowed, he was discharged upon entering into a recognizance to appear at the next sessions, in order to account. *See 17 G. 2. c. 38. f. 2.*

85. *R. v. Whitear, et al. M. 3 G. 3. Burr. Part 4. Vol. 3.* 1365. An original order made at the quarter sessions for the borough of *Portsmouth*, purported to be an order made upon the appeal of the present overseers of the parish of *Portsmouth*, directing their predecessors, the late overseers, to pay over to the appellants, the present overseers, the balance of their accounts, which accounts were settled and balanced by the said order of sessions. Exception was now taken to the jurisdiction of the sessions, to make

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make an order upon late overseers, to pay over money to their successors by an original order in the first instance, without any previous application having been made to two Justices, pursuant to the directions of the 45 *Eliz.* c. 2. § 4 & 6. To this it was answered by the counsel who attempted to support the order, that this order was not made upon the 43 *Eliz.* : but upon the 17 *G. 2.* c. 38. § 4. But to this it was replied, that the *Stat.* of 17 *G. 2.* c. 38. does not give power to apply to the sessions, *per saltim*, to make such an order as this ; but that the previous application to two Justices remains as necessary, as before. The court was of the same opinion, and that the 17 *G. 2.* made no alteration in this respect, but had quite another view. And the order was quashed.

Churchwardens refusing to account, to be committed till they shall account.

86. Case of the mayor and churchwardens of *Northampton*, T. 2 *W. & M. Carib.* 152. The mayor of *Northampton* committed the churchwardens for refusing to account before him, by a warrant concluding ; until they be duly discharged according to law ; the court held that the warrant ought to have concluded ; there to remain until he shall account. There is a difference in the case where a man is committed as criminal, or for contumacy in refusing, as in this case, to do a thing required. In the first case the commitment must be until discharged according to law ; but in the latter case, until he comply and do the thing required of him ; for in that case he shall not lie till the sessions, but shall be discharged on performing his duty ; therefore the churchwardens were discharged by rule of court.

87. *R. v. Garrocks*, E. 4 *W. & M. Shower* 395. Defendant was committed by two Justices of the Peace by warrant, reciting that he being an overseer, had appeared before them, and being required to give a just and true account of all such monies as have been received and paid, and hath only produced an account in gross of his receipts and payments, and refuses to give a particular account, or to produce his books, by which he received the monies on rates assessed, &c. and also a particular account to whom he hath paid such money charged in gross, and therefore they believed such an account to be no account, according to the 43 *Eliz.* and the said defendant hath refused to give any other account ; they therefore commit him till he shall make a true account before them, or two other Justices : he was discharged upon *Habeas Corpus*, because the Justices had no authority to commit in this manner, by the statute *Eliz.* for that an account was confessed to have been tendered, &c.

If an account is tendered the Justices cannot commit.
See pl.

88. *Walton's case, Devon. Lent Assizes, 1719.* It was resolved by Ld. Ch. J. King, that the Justices can't commit an overseer for bringing in an account to which they object, but that they ought to hear it, strike out what is amiss, and balance the account. Same resolution.

89. *R. v. Sedgecold, 10 G. 2. MSS.* It was resolved, that Justices may fine overseers, as well as imprison them, for refusing to account. May fine overseers.

90. *R. v. Bartlett. Temp. Hardwicke Ch. J. MSS.* On orders of the der of sessions that the several sums amounting in the whole to—be struck out of the disbursements: that On orders of the sessions relating to overseers accounts, it must appear that the accounts had previously been before two Justices.
Eduard B. and J. D. late churchwardens and overseers do pay to the present overseers eleven pounds five shillings. Exception 1. The appeal was lodged at a former sessions, and if it do not appear when they were held, it might be an illegal day: (*King v. inhabitants of Chad Shrewsbury*) The court will not intend that the sessions were held on a right day, unless that appears. Exception 2. It does not appear that the appeal was adjourned, and if not, the Justices cannot proceed *de novo*. Every new sessions being in nature of a new court. Exception 3. The disbursements of the churchwardens are not a proper subject of inquiry at sessions, but taking them as overseers they ought first to have gone before two Justices of the Peace, *Salk. 471.* They cannot begin at the sessions, by *43 Eliz.* Exception 4. The order is on two persons when a payment by any one would have been sufficient. Exception 5. The act says, the churchwardens and overseers are to pay to the succeeding overseers, but here the overseer for 1731 are passed over. Exception 6. The subject matter is by no means inquirable at the sessions, this money arising out of the parish stock, application should have been made in Chancery for a commission of charitable uses; it not appearing that all this stock was levied by a tax under *43 Eliz.* On the other side *Mr. Fazakerly.* First, the parties may appeal to any sessions, are not confined to the next; therefore all that strictness is not necessary as when the appeal can be only in the next: It is plain here was a sessions, and it is the express allegation of the order that there was a sessions. 2. The adjournment need not appear; indeed when there would be a discontinuance it is necessary to state a regular adjournment; but here the Justices are not bound to determine at the next sessions. 3. Churchwardens are made overseers, by *43 Eliz. sect. 6.* And as to the going before

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fore two Justices, it is to be presumed they did. Besides the 43 *Eliz. sect. 6.* gives an appeal from act done, be it by the churchwardens or other persons, or by the said Justices. So that being in the disjunctive there is no need of going before two Justices at all. 4. The order must be made to all; for all constitute but one officer, and payment to one is payment to all; and as to the persons to pay they are all jointly required, and the payment by one is a discharge of all, and therefore the order is proper upon them all. It is every day's practice to give judgment against all jointly. 5. I agree they ought to have paid to the next succeeding overseers, but as they have not done their duty till the trust is determined, they ought to pay it to the next. 6. It does not appear there is any parish stock, besides what arises from 43 *Eliz.* and the court will not presume there is. Lord *Hardwicke* Ch. J. All the exceptions but one have received answers; that touching the jurisdiction of Justices at the sessions, as to the continuances, I do not think that the Justices are bound to make formal entries of them. As to the holding of the former sessions, we are not to presume it to be held at a wrong day, and it is well enough to say, that it was done at the last general quarter sessions, and if you had any objection you might have removed the former order. It is like the case of exception to the recitals of original writs, which cannot be taken advantage of, unless the original is returned by *Certiorari*. As to the payment by and to all, it is well enough; as to the succeeding overseers that too is not amiss: as to the 6th, it is answered; but I am not satisfied as to the not going before two Justices at first, the words must be taken respectively and distributively, therefore it should be shewn the matter had been originally before two Justices; all that is here said is; that it is an appeal from the disbursements, and from the allowance thereof, but it does not appear where allowed, nor does the word allowance sufficiently shew it to have been before two Justices, as Mr. *Noel* contends. *Page Justice*: Whenever an act gives an appeal you cannot come to the sessions first. The question is therefore, Whether that is supplied by the single word allowance? It may be an allowance by the parish. So that it does not necessarily import the allowance of two Justices, to whom you must go before you can go to the sessions. *Lee Justice*: I should be glad to look into 43 *Eliz.* If going before two Justices is necessary, then to

appeal without going before them is ill, but it is not very clear with regard to the jurisdiction of the two Justices. There is a recital of an allowance, now Mr. Noel's case, *Salk.* 533. is of an improper allowance, which is no allowance of the Justices. Afterwards *Ld. Hardwicke* delivered the opinion of the court, that this matter ought to have come to the quarter sessions by appeal from two Justices, and that the quarter sessions cannot take it up originally. If authority be given to two Justices to do an act, and no appeal is given, then it may commence at sessions, but if an appeal be given, then it cannot be begun at sessions. See 2 *Str.* 983.

91. *R. v. Justices of Berkshire, H. 10 G. 3.* Rule for a *Mandamus* to the Justices of *Berks*, to proceed in an appeal against the accounts of *A. B.* late overseers of the parish of *C.* The appeal was by *Aldridge* the present overseer, for himself, and the rest of the parish. The question upon shewing cause was, Whether an appeal from an overseer's account, verified and allowed, according to the directions of the 17 *G. 2. c. 38.* must be to the next sessions after the allowance, or may be to any subsequent sessions? But it appeared from the affidavits, that the late overseer *A. B.* had been very severely treated by the Justice, upon whose affidavit this rule had been granted; he had been committed by him, for not accounting according to the statute, and when it appeared that his accounts had been allowed by another Justice, before this commitment, an appeal was lodged, &c. Mr. *Wallace* and Mr. *Vansittart* argued, that the Justices had rightly rejected the appeal, and that the 17 *G. 2. c. 97. s. 4.* which limits the time for appealing to the next general or quarter sessions, and gives a power to the Justices of awarding costs to either party, had to this purpose repealed the 43 *El. c. 2.* notwithstanding both the statutes are in the affirmative, and that Dr. *Burn*, from that circumstance, concludes, that they may well stand together, and an appeal may be upon either. For the 17 *G. 2. c. 38.* was professedly made, as the title of it imports, to remedy some defects in the 43 *Eliz. c. 2.*; one great defect was, that however vexatious an appeal might be, the sessions had no power to punish the litigious party, by awarding costs against him; and this mischief will remain altogether unremedied, if appeals may still be upon the 43 *Eliz.*; for whenever a party intends to be vexatious, and to harass his adversary by a groundless appeal, he will let one session pass, and then prefer his appeal upon the 43 *Eliz.* and

If overseers accounts are passed before one Justice, (by the 17 *G. 2.*) the appeal from them must be to the next sessions; if before two Justices (under the 43 *Eliz.*) the appeal may be to sessions at any distance of time.

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by that means avoid the payment of costs. In the case of the Justices of *Sussex*, 15 G. 2. the court was of opinion, that it might be highly inconvenient to leave the statute of appealing unlimited, and rather inclined to think, that by analogy to other cases the appeal ought to be to the next sessions, though the words of the statute were general; and the legislature, two years afterwards were of the same opinion; and expressly confined the appeal to the next sessions. As the 17 G. 2. was made to remedy some defects in the 43 *Eliz.* wherever a method is prescribed by that statute, different from that prescribed by this in the same matter, it is the same thing as if the legislature had said, the method prescribed by the 43 *Eliz.* being defective, the following shall, in the stead thereof, for the future take place; which would clearly have been a repeal of the former statute in the particular considered. Besides, the 43 *Eliz.* c. 2. s. 2. having enacted, that the overseers shall, within 4 days after other overseers are nominated, make and deliver to two Justices, a true account, &c. This statute 17 G. 2. c. 38. s. 11. alters this provision, and enacts, that the overseers shall, within 14 days after others are appointed, deliver over to their successors, a true account, verified by oath before one Justice, &c.; and then by s. 4. it is enacted, that if any person have any material objection to such account, as aforesaid, it shall be lawful for such person to appeal to the next sessions, and such account as aforesaid, must mean an account verified and allowed, according to the directions of this statute; the account in question was so verified and allowed, and therefore the appeal ought to have been to the next sessions. This was no account under the 43 *El.* and therefore the overseer could make no defence to an appeal upon that statute, (if such an appeal could be) altho' he had pursued with the minutest exactness all the directions of the 17 G. 2. Mr. *Solicitor General* and Mr. *Cotton* *e contra*. The words of 43 *El.* c. 2. s. 6. are general and clear, and import nothing like appeals to the next sessions, after the party appealing shall be aggrieved, nor do they on the score of convenience require any such construction, for all the inconveniences of deferring an appeal fall on the side of the appellant; the longer his grievances are unredressed, the more difficult it will be to obtain redress; the difficulties will increase upon the appellant by delay, and therefore every person thinking himself aggrieved, will appeal as soon as he can. But on the other hand, substantial injustice is often done, by limiting

mitting appeals to the next sessions after the cause of appeal arises, as in the present case. The parish appealing did not know that the accounts were allowed, until the time for appealing was elapsed, if the doctrine contended for on the other side be true. Had this matter therefore, stood only upon the appeal, it would have been in time, and the rule must have been made absolute: but it is said that the statute 17 G. 2. c. 38. has repealed this clause in the 43 Eliz. that is not so; for it is a general rule, that an affirmative law is not repealed by a subsequent affirmative, and these statutes are both in the affirmative, and may stand together, and have also been ever so understood. Had the legislature intended to repeal this clause in the 43 Eliz. as the subject was before them, they could have done it by an express clause for the purpose. There are neither any negative words in the 17 G. 2. nor any words of substitution, as instead of the method prescribed, &c. which would have shewn an intention to repeal the former clause. Indeed it seems, the only defect which the legislature intended to remedy, respected the costs, and then it was reasonable not to give the appellant a chance for costs, unless he had prosecuted his appeal with due diligence. It has been objected, that when a man intends to bring a vexatious appeal, he will let one session pass before he lodges his appeal, in order to avoid costs. The objection proceeds upon this foundation, that a man will bring an appeal, knowing at the time he prefers it, that it is groundless and vexatious. There then is little room to fear, as most men are so partial to their own interests, as to think they are injured before they complain; and for this reason appeals will generally be brought as soon as possible, because the appellant if he prefers his appeal at the next sessions, and succeeds, will be intitled to costs. Some arguments have been drawn from the manner of making up the accounts, as that they were verified, and allowed, according to the directions of 17 G. 2. and not according to the 43 Eliz. therefore the appeal should have been according to the directions of that statute. The manner of making up and verifying the account was the act of the overseer, and therefore ought not to be prejudicial to the inhabitants, who had nothing to do with it; besides, these alterations are all made in favour of the overseers. The account still remains what it was before; it is still the overseers account under 43 Eliz. As the Justices have been determined to be only ministerial, it was sufficient to verify the account before one Justice; and the

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statute further said, that if it was made up in fourteen days, it should be as good as if made up in four: but when it is verified and allowed, it is a rate under the 43 *Eliz.* and may be appealed from as such. *Ld. Mansfield* said, He had seldom seen a case of greater oppression; and having stated the affidavits to prove it, observed, that this rule was obtained upon the affidavit of *Edmond Cook*, the very person who committed the overseer for not accounting according to the directions of 17 *G. 2.* and therefore he shall not be permitted to say, that the appeal may be on the 43 *Eliz.* On account of the gross oppression, the rule ought to be discharged with costs. *Yates J.* This was no account at all under the 43 *Eliz. c. 2.*; and therefore, if the parish thought proper to proceed against the overseer upon that statute, they should not have appealed, but should have proceeded against him as for not accounting. I am very clear that the appeal should have been to the next sessions. *Willes J.* Of the same opinion. Rule discharged with costs.

Appeal from Overseers Accounts. — See 43 *Eliz. c. 3. f. 6.* and 17 *G. 2. c. 38. f. 4.* see *pl. 32.* and *pl. 91.*

If overseers obtain money fraudulently, the remedy after their accounts are passed is by indictment.

92. *T. 6 W. & M. Comb. 287.* An overseer charged the parish with three pounds for putting out an apprentice, and his accounts were allowed by two Justices, but in reality the apprentice never was put out: Upon complaint to the sessions, they order, that the late overseer should repay the money so fraudulently obtained with costs, &c. *Eyre Justice*, This order cannot be maintained; the sessions have no jurisdiction, but there may be another remedy by indictment.

Justices in sessions must execute their authority, with regard to the allowance of overseers accounts in the same manner as two Justices must do.

93. *R. v. Hedges, 4 Ann. 2 Salk. 533.* Upon appeal of the parish from the allowance of overseers accounts, the Justices at the sessions, if they see reason, may disallow the accounts of the overseers, and order them to pay a certain sum over, which they judge to be in their hands; but if they refuse to do so, cannot imprison them directly; but must, agreeably to the 43 *Eliz. c. 2. f. 4.* levy the arrears by distress and sale, and in default of distress commit him; for the Justices in sessions must execute their judgment in the same manner as the two Justices must do.

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94. Case of the overseers of *Whitechapel*, *H. 10 Ann.* Justices at sessions upon an appeal may direct two Justices to make an examination previous to the allowance of the overseers accounts. *Vin. Abr.* title *Poor*, 417. Their account being allowed by the Justices, the parish appealed to the sessions, where the account was set aside, and a re-examination of the matter was directed to the same two Justices; this order being removed, it was objected that here was a matter delegated by the court, who were finally to determine the matter in question. *Parker Ch. J.* The overseers have four days time for passing their accounts, and they may go before any two Justices for that purpose. Till the time is passed, there is no compulsion used; but if this time is slipt the parish may go before any two Justices, and when these have entered upon the examination, no other Justices are afterwards to intermeddle; and when this matter comes to the sessions they are to take order therein as to them shall seem convenient, but need not finally determine.

95. *R. v. Bowen*, *E. 5 G. Sett. Poor.* 111. The defendant was overseer, and several years after his accounts had been allowed and confirmed, the parish appealed against his accounts: *Per Cur.* The statute being silent as to the time, the parish may appeal at any time. *See pl. 91.*

Of the payment of the Balance remaining in
their Hands. See Page 91.

96. The case of the borough of *Banbury*, *M. 2 Jac.* Justices may order the overseer to make a distribution. *2. Skin.* 258. There are four adjacent towns within the parish of *Banbury*, and there is an overseer within each town, and an overseer also within the borough; they all join in one account, and there is but one rate made for all the parish, but the overseers of each particular town collect, and pay the money within such town: a person who is tenant of lands in one of these towns lives in the borough, and is assessed by the overseer of the borough for lands within the town, and paid to the overseer of the borough, and the like is done in the other towns; so that the overseer of the borough had a surplusage for the poor within the borough, and the overseers of the towns wanted money for the poor within the towns, though the poor within the towns were less than the poor within the borough. And upon this the Justices ordered that there should be a distribution made, and this order being removed, was confirmed; this case being held not within the statute *14 Ca. 2.*

The Justices who take the accounts of the overseer, may make an order for them to pay the balance to the succeeding overseers,

See the 17 G. 2. c. 58. s. 11.

If overseers have laid out their own money upon the mainenance of the poor, they may, previously to their going out of office, make a rate for the relief of the poor, and reimburse themselves out of it; but cannot make a rate professedly to reimburse themselves, nor can a rate be made to reimburse them, after they are out of office.

97. *R. v. Churchwardens of Topsham, H. 10 W. 3. 2 Salt. 484.* Three Justices took the account of the churchwardens, &c. of *Topsham* for the year 1697, and adjudged that sixty nine pounds was due from them to the said parish, for the re-payment whereof to the succeeding overseers for the year 1698 the Justices made an order, to which it was objected that the Justices have no power to make such order, but only to issue warrants to distrain; but the court held the order to be well made.

98. *Tawney's case, H. 2 Ann. Ld. Raym. 1011.* *Tawney* being overseer of the poor, laid out his own money in their relief, and being turned out of his office before the end of his year, obtained a *Mandamus* directed to the churchwardens, &c. to re-imburse him, upon the return being made, it was argued that there could be no such charge or command, either by the 43 *Eliz.* or at common law. *Holt Ch. J.* The statute 43 *Eliz.* directs a method for the relief of the poor, by way of rate made by the officers, with consent of the parishioners, but *Tawney* has disbursed his money without any rate, but he cannot disburse what money he thinks fit; the statute never intended to give the overseers such an authority, for then they might dispose of the parish-money as they please; if new poor come into a parish after a rate made, the parishioners must make a new rate to supply them; the Justices have a superintendency by the act as to poors rates, and the method appointed by the act must be pursued. The poors rate must be made for relief of the poor, and not to reimburse overseers; though if they have laid out money before, they may reimburse themselves out of the money levied upon such rate: it is not material whether the money be disbursed before or after a rate is made. If a rate be made, and accidents happen which raise the necessary sum higher, no doubt but the overseers may disburse so much as the rate falls short, and afterwards reimburse themselves out of a rate made for the relief of the poor, and they must not be their own judges in that case, but ought to apply to the Justices who will certainly confirm such rate. *Tawney* should have made such a rate while he continued in his office, and if the Justices had refused to allow it, a *Mandamus* should have been issued against them: *Tawney* must bring an action against those who turned him out of his office. There is no necessity that an overseer should pay money out of his pocket, for the churchwardens and overseers, with the confirmation of the Justices,

Justices, may order a sum of money to be levied for the maintenance of the poor, without the concurrence of the parish, (and may levy the money by distress, see 6 *Mod.* 98.) He should have made a rate during his own time; he laid out his money at his own peril. The writ was quashed. In the report of this case, 6 *Mod.* 98. *Holt* Ch. J. observed that there ought to be a monthly rate, because possessors ought to pay, and possessions frequently change, 2 *Salk.* 531. and in *Rex v. Ware*, 11 *Ann.* it was resolved that the Justices, or the sessions have not authority to order the parish to reimburse the overseers after they are out of office, (two years in the present case) because otherwise a person who comes into a parish after the overseers year is expired, might be charged to the expences of the year, *Fol.* 14. *N. B.* It is not necessary that the parishioners should consent, for the churchwardens, &c. by the consent of the Justices may make a rate without it. *Per Eyre Justice*, 9 *Ann. Vin. Abr.* title *Poor* 425.

99. *R. v. Turner*, *E.* 9 *Ann. Vin. Abr.* title *Poor*, 416. If accounts are adjusted, and the overseers refuse to pay the balance, they cannot be committed immediately, but a warrant must issue to distrain upon them, and upon a return thereof there may be a commitment; and it was determined before *Ld. Ch. J. King* at *Devon assizes* 1719, that the Justices cannot commit an overseer of the poor for bringing in an account to which they object, but they ought to hear it, and strike out what is amiss in it, and ballance the account.

100. *R. v. Limehouse*, *E.* 1 *G. Fol.* 32. There was a custom in that parish for the churchwardens to pay the casual poor, as they called them, and the overseers of the poor, the pensioners; the churchwardens were sixty pounds out of pocket at the end of the year; and the sessions finding that the overseers had enough of the publick money already raised to pay the churchwardens, ordered them to be reimbursed. Objection was made to this order, that at the end of the year the officer cannot be reimbursed, for that no rate can be made to reimburse him: *Per Cur.* Here the money was raised already, and the order was no more than that one officer should pay to another. The following is a copy of the record in this case. The order of sessions was to this purport: "Upon reading the petition of *Thomas Thresher*, setting forth that he served the office of churchwarden for the hamlet of *Limehouse*, &c. in 1712, and that he

Rate may be made without the concurrence of the parish.

See pl. 46.

Overseers refusing to pay the balance not to be committed immediately. But see pl. and 17 *G. 2. c. 30. s. 2.*

One overseer may be ordered to reimburse another out of money already raised.

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did in the time of his said office lay out, over and above what he received, 60 *l.* &c. and praying to be reimbursed: it was referred at the last sessions to the consideration of three Justices to issue summons, and examine, &c. To whom the present overseers and churchwardens declared that they had no objection to the account of the petitioner, and that they believed he had laid out that money. The three Justices therefore allowed his accounts, and recommended to the officers and inhabitants of the said hamlet, to make a rate to reimburse the petitioner the said 60 *l.* which yet they refuse to do. And now on this day, on hearing counsel on both sides, for that it appeareth unto this court, that the petitioner when he was churchwarden of, &c. he informed the inhabitants thereof at their parish meeting, that he was considerably in disburse, for relieving the casual poor of the said hamlet, and prayed a rate to reimburse him, and that they refused to make him any rate, on pretence that the late churchwardens and overseers had publick monies in their hands, upon the balance of their accounts, sufficient to re-imburse him, which they agreed should be applied for that purpose, which money was received by the present churchwardens and overseers of, &c. and that the said sum of 60 *l.* is yet remaining due to the petitioner upon the balance of his accounts, and that the same could not possibly be raised by the petitioner while he was in the said office. This court doth therefore order, that the present churchwarden and overseers of, &c. do forthwith pay to the petitioner 60 *l.* so as aforesaid by him expended, and now remaining due to him; and that the said sum when paid, shall be allowed to the said churchwarden, &c. upon their accounts. *Per Curiam.* Let all the orders made upon the petition of *T. Thresher*, against the defendants, and the parish officers of, &c. respecting the payment of 60 *l.* expended by *T. T.* in his office be affirmed."

101. *R. v. Overseers of St. Peter's the Great Chichester, T. 10 G. Fol. 33.* An order that the present overseers should pay the preceding three pounds, being money expended by them in law charges, was quashed. Upon searching the records, the only special order discovered, of the same name and date as the above, so imperfectly stated by *Foley*, runs thus. *Chichester, to wit.* At the general quarter Sessions for this city. It being made appear unto this court by *John Chantrell*, that there were remaining due to him on his account, as one of the overseers of the

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the poor of the parish of *St. Peter the Great*, at *Subdeanry* within the said city for the last year, three pounds and fifteen shillings, which the now overseers of the poor of the same parish have not paid him. It is, in the presence of the now overseers of the poor of the said parish, having nothing to say to the contrary, by this court ordered, That the now overseers of the poor of the said parish, do forthwith pay unto the said *John Chantrell*, the said three pounds and fifteen shillings, so remaining due to him on his said account as aforesaid; and that they have allowance thereof in their accounts, to be made with the said parish: It being made appear unto this court by *Richard Libbard*, that there were remaining due to him on his account, as one of the overseers of the poor of the parish of *St. Peter the Great*, at *Subdeanry* within the said city, for the last year, eleven pounds two shillings and sixpence, and that he hath also paid Mr. *John Halfey*, attorney at law, one pound five shillings and tenpence, for business by him done for the said parish, which the now overseers of the poor of the same parish have not paid him. It is, in the presence of the now overseers of the poor of the said parish, having nothing to say to the contrary, by this court ordered, that the now overseers of the poor of the said parish, do forthwith pay unto the said *Richard Libbard*, as well the said eleven pounds two shillings and sixpence, so remaining due to him on his said account as aforesaid, as the said one pound five shillings and tenpence, by him paid to Mr. *John Halfey*, for business done for the said parish; and that they have allowance thereof in their accounts to be made with the said parish. The order of the court of *K. B.* is in these words: It is ordered, that the orders in this cause made against the present overseers of the poor of, &c. to pay a sum of money mentioned in the orders to *J. C.* and *R. H.* late overseers of the poor of the said parish, be quashed for insufficiency.

102. *R. v. Justices of Somersetshire*, *M. 8 G. 2.* 2 *Str.* The balance must be paid over to the succeeding overseers, notwithstanding the vestry may be willing to let them retain it to pay an attorney's bill of expences for suing for a sum of money to be laid out in charity uses.

992. *Mandamus* to the Justices to grant a warrant for levying thirty pounds, being the balance of the account of the last overseers in their hands. They return that there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity money, and get it laid out for the benefit of the poor; that one *Young* was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay *Young*, *et ea de causa* they had refused to grant

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The balance must be paid over to the succeeding overseers, notwithstanding the vestry may be willing to let them retain it to pay an attorney's bill of expences for suing for a sum of money to be laid out in grant *charita le uses.*

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grant the warrant. *Per Cur.* There must go a peremptory *Mandamus*, for the 43 *Eliz.* says the balance shall be paid over to the new overseers under a penalty, and it is not in the power of the vestry to dispense with the statute.

Indictment
against overseers
not paying over,
not quashed.

103. *R. v. King, E. 20 G. 2. Str. 1268.* The court refused to quash an indictment against overseers for not paying over money to their successors, as quashing is not *ex debito iustitiæ*, and this is a growing evil, and in *Comb. 374.* An overseer being indicted before the sessions, *Holt Ch. J.* said that it seemed to be within the direction of the statute.

Protection in their Office.

A. brings an
action against B.
who pleaded
Not guilty, and
justified as over-
seer, A. was
non-suited, B.
shall have a writ
of inquiry to
assess damages.

104. *Brampton's case, M. 13 Jac. Roll's R. 272.* He brought trespass against certain persons who pleaded not guilty, and at *Nisi prius* (as appeared by the certificate of the judge upon the back of the *posse*) the defendants justified as overseers, &c. and shewed the special matter in evidence, by the statute *Eliz.* and the court *B. R.* was moved to grant a writ of inquiry of damages, for the treble damages, which he the overseer ought to recover against the plaintiff by this statute 43 *Eliz.* And upon oyer of the statute, that the damages shall be assessed, &c. *Dodd* said, This is to be intended that it shall be tried by writ of inquiry of damages in such cases as it ought to be by the law, *viz.* upon discontinuance or demurrer; for the words (as the case requires) imply as much: And by the law, when a jury ought to have found a thing, and do not find it, this shall not be supplied by a writ of inquiry of damages; and this was so ruled in *Banco, quod fuit concessum, per Cur.* That such defect shall not be supplied by a writ of inquiry of damages, because then the party shall be ousted of his attain. But in the case at bar, the writ of inquiry of damages was granted by the court, inasmuch as the plaintiff was non-suited, so that the jury could not assess the damages; and damages were found accordingly.

105. *Thomas's case M. 3 Ch. Hetley, 36.* Action on the case by a constable of a parish, against *Styrling*; for saying, thou art a bribing knave, and has cozen'd the parish of *W.* in rates to 30 *l.*

Justices in ses-
sions cannot a-
ward an attach-
ment against
overseers.

106. *R. v. Bartlett, MSS.* An award of an attachment by the Justices in sessions, against overseers for disobeying

disobeying an order made at a former sessions was quashed; because the sessions had no power to award an attachment for contempt in disobeying, &c. the proper method in such cases being by indictment for a misdemeanor.

107. *R. v. Daubney, M. 17 G. 2. MSS. 2.* The churchwardens for the parish of———had been sworn in upon a *Mandamus* from the court, and had made rates, &c. which concerned the parish, and had otherwise acted in their offices; and now Mr. *Henley* moved for an information *Quo warranto* against one of them, to shew by what authority he exercised that office. But the court denied the motion, a churchwarden not being such a publick officer against whom an information would lie; for it was no usurpation upon the crown, and they might as well apply for an information against a constable or overseer, and the parties aggrieved might have their action; for his being sworn in by virtue of the *Mandamus*, would be no bar to such action, because a *Mandamus* gives no right, but leaves the matter as it was, before.

Quo warranto does not lie against churchwardens. But a *mandamus* gives no right, nor is a bar to an action by parties aggrieved.

108. *R. v. Byce, T. 28 G. 2. MSS.* Defendant was indicted for not paying twenty shillings costs, on the dismissal of his appeal to quarter sessions at *St. Albans*, from a poor's rate for *Redburn*. Indictment set forth, that whereas *B.* appealed from, &c. on hearing the sessions ordered the same rate to be confirmed, and by reason the appeal appeared frivolous, the court ordered the defendant to pay twenty shillings costs, and then sets forth the order *verbatim*, and then states, that the defendant having notice thereof, injuriously, and contemptuously refused to pay, &c. The court refused to quash; but on demurrer the objections were, First, that it was not an indictable offence. Second, that it was stated by way of recital. Third, because 17 G. 2. gives a remedy by distress. Fourth, that it was not stated, that the defendant was an inhabitant. Fifth, that the act concerning costs does not extend to inferior jurisdictions, as *St. Albans*: But they were over-ruled; and the court held, that the 8 & 9 W. 3. has in certain cases given remedy; but that this case does not fall within that remedy, 8 & 9 W. & M. gives relief in cases of appeals concerning removals.

A. was indicted for not paying twenty shillings costs on the dismissal of his appeal to the poor's rate, and it was held that an indictment might be brought. See pl. 149.

109. *Bennet v. Hart, E. 28 G. 2.* In an action of trespass against an overseer of the poor, on account of something done by virtue of the 43 Eliz. c. 2. A verdict being found for the defendant; the jury omitted to assess the treble damages given by that statute. Mr. Justice

Action of trespass against an overseer, verdict for the defendant, jury omitted to assess the treble damages.

Denison.

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Denison. If judgment had been entered up, the application for a writ of inquiry would have been too late; but as it has not, the court may award one. There must however be, as a foundation for awarding the writ, a suggestion entered upon the *postea*, that the defendant was an overseer of the poor; and that the action was brought against him for a thing done by virtue of the 43 *Eliz. c. 2. Law of Damages* by Mr. Serjeant Sayer, 245.

Penalty upon Overseers misbehaving, see 43 *Eliz. c. 2. s. 2, & 11. & 3 W. & M. c. 11. s. 12. & 17 G. 2. c. 38. s. 14.*

110. If an overseer does not provide for the poor he is indictable, and if he relieves the poor when there is no necessity, it is a misdemeanor. *Vin. Abr. title Poor, 515. 3 Ann.*

Where a statute directs that a thing may be done, where it is for the publick good, it is to be construed shall, be done.

111. *R. v. Barlow. 5 W. & M. 2 Salk. 609.* Indictment on 14 *Car. 2. c. 12.* against churchwardens and overseers for not making a rate to reimburse the constables: exception was taken, that the statute only puts it in their power to do so, by the words *may, &c.* (see the 18th section) but not require it as a duty, the neglect of which should be punishable. By the court: Where a statute directs the doing a thing, for the sake of justice or the publick good, the word *may* is the same as the word *shall*. Thus the 23 *H. 6.* says, the sheriff *may* take bail; which is construed, he *shall*, and he is compellable so to do.

Indictment lies for refusing to accept the office of overseers, or for disobedience to an order of Justices, or to an act of parliament.

112. *R. v. Jones, M. 14 G. 2 MSS.* Three Justices of the peace for the county of *Kent*, did within a month after *Easter*, under their hands and seals appoint *Hodges* and *Jones* as being substantial householders to be overseers of the poor of *Maidstone* for the year next ensuing. Upon notice, *Jones* obstinately refused to accept the office, and thereupon was indicted upon 43 *El. Jones* demurred to the indictment, and there was a joinder in demurrer. For the demurrant several objections were taken to the indictment. 1. That by the above act *Jones* was complete overseer by the very appointment of the Justices, in spite of his refusal; if so the indictment is improper; for if *Jones* did not by any act refuse the office, he ought to have been indicted for not executing the office, or for his several neglects during the time he was overseer; and though

though it be admitted that a constable might be indicted for his refusal of his office, after an appointment in the court leet, as if he refused to take the oath, yet there was this distinction, that an overseer who is an officer by statute had nothing further to do after his appointment to complete his being an officer; but a constable is an officer at common law, and must take an oath in the leet after his appointment before he can act or be a complete officer; and therefore a refusal of the oath is a renunciation of the office. 2. That this appointment is for a year absolutely, and therefore bad, because overseers being appointed in *Easter* week, or within a month after, and *Easter* being a moveable feast, there may be sometimes two sets of overseers. *Mr. Solicitor General contra.* The penalty of this act is to be levied only where he has once accepted of the office, and neglects afterwards to do his duty in it; and it is but as one equivalent for one omission, and not for neglecting the whole office; he is not a complete officer till he has acted in it, and therefore the indictment is for not accepting of the office when he has been legally appointed. *Salk. 308. R. v. Loan M. 5 G. 2. R. v. Winsborn, 2 G. 1. Lee Ch. J. cited R. v. Inhabitants of Marlow, T. 13 G. 1.* To shew that the appointment of an overseer for a year is sufficient, though the time of his continuance is uncertain, it depending upon *Easter* day. As to the main objection whether an indictment lies upon 43 *Eliz.* for an overseer refusing to accept the office, I am of opinion it will. The statute enacts that four, three or two substantial inhabitants of the parish to be nominated by two Justices of the Peace shall be overseers of the poor. This is the manner in which this act hath constituted this officer, and then it goes on, and directs particularly what are the *Agenda* of an overseer; and then there is a subsequent clause that directs farther facts to be done by overseers; as to meet monthly at the church in the afternoon after divine service, &c. and annexes the penalty of 20 s. to every omission: If this clause reaches only to the particular instances therein enumerated, then the refusal of such office of overseers is a case that is not provided against by this clause to undergo the penalty of 20 s. for it only extends to omission after the actual acceptance of the office. I am of opinion that *Jones* may, and has refused the office, and though no express indictment is given by this act of parliament for a refusal of office, yet *Jones* will be indictable upon this statute, upon the principles

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ciples of common law, which are that every man shall be indicted for disobeying a statute; besides as this is an order of Justices, he is indictable for his disobedience and breach of that, and there is no foundation for the distinction between a constable and an overseer: Therefore judgment for the prosecution. See *Str.* 1146.

Officers indictable for not receiving a pauper sent to them by order of justices.

See pl. 149.

113. *R. v. Davis et al*, *M.* 28 G. 2. *MSS.* The defendants were indicted for not receiving a pauper sent to them by order of two Justices, and were found guilty upon their trial. Motion in arrest of judgment as not being an indictable matter: but judgment was affirmed for disobeying the 13 & 14 *Ch.* 2. and the court said, that every one who refuses to obey the act of parliament is indictable; unless another remedy is provided, which there is not in this case.

Conspiracy.

• 113. *R. v. Herbert and others*, *E.* 32 G. 2. An information was moved for against the defendants, who were overseers of the poor in the parish of *Trinity in Coventry*, on affidavits charging them with a conspiracy in procuring one *Yardley* a cripple, and parishioner of *Great Harborough*, to marry a young woman who belonged to *Trinity*. The officers pretended, that the match was of the parties own choosing, and that they only attended to see the ceremony regularly performed. But the court thought they had not sufficiently exculpated themselves, and held this offence, if true, to be proper for the animadversion of this court; and therefore made the rule absolute.

See *Str.* 757.

114. *R. v. Tarrant and others*, *T.* 7 G. 3. Motion for an information against the defendant, for giving a man a sum of three guineas to marry a woman who was big with child by another man, to disburthen his own parish, and throw it on the parish to which the husband belonged. For the defendant it was insisted, that by his affidavits it appeared, that the man and woman had contracted themselves without his previous knowledge or consent, and that tho' *Tarrant* had given him something, that was in compliance to overtures made to him by the father, who had asked him, what he would give him to take off the cow and calf, meaning the woman big with child? *Tarrant* said, he would give him three guineas, and some faggots, which were accepted, and they were married. And also that it appeared in express terms by the affidavits, that when the man and woman agreed to be married, the man said, he would put it off, to see what he could get from the churchwardens; that it was a mere pretence of delaying

laying to be married, not from any dislike, but to carry on a fraud with him, and obtain money; and that he the defendant had only promoted and not forced the man's inclinations. But the court thought that this was gross misbehaviour, and therefore granted the information. See *Burn. Title Marriage*.

* 114. *How v. Keech. Bedford, Lent assizes, 1772.* In this action the plaintiff declared upon two notes, given him by the defendant; by one of which the defendant promised to pay to the plaintiff 20*l.* and by the other 10*l.* The plaintiff likewise in the third and fourth count declared for 30*l.* had and received by defendant, for the use of the plaintiff, on the same days on which the notes were dated. The notes were as follows: I promise to pay *Richard How*, or order, 20*l.* out of the first levy which shall be collected for relief of the poor, he having this day advanced that sum to me *Ebenezer Keech, Aspley, Jan. 22, 1771.* The second note was in these words: I promise to pay *Richard How*, or order, 10*l.* as above-mentioned, he having this day advanced that sum to me on the said account, *Ebenezer Keech, Aspley, Feb. 25, 1771.* These notes were both written on the same piece of paper. The defendant pleaded that he did not undertake in the manner and form, in which the plaintiff had declared; upon which issue was joined. — At the trial it was proved that the notes were signed by the defendant, and that he had confessed, that he had received the money from the plaintiff; and it was admitted on all hands, that previous to the date of these notes, there had been disputes about the poor rates of *Aspley*, between the plaintiff and his tenants on one side, and *Mr. Moore*, a gentleman of considerable property, and several other of the parishioners on the other side; that the rates were quashed at the Epiphany sessions 1771, and the matters in dispute referred for examination to two gentlemen, by an order of sessions; and at the same time, to prevent the poor from being without relief, while the matters in dispute were under the examination of the referees, the plaintiff and *Mr. Moore* agreed and undertook before the Justices, to advance money to the defendant, then overseer of the poor, to be applied solely to their relief; and the plaintiff accordingly advanced the sum of 30*l.* The reference was fruitless, from a disagreement in opinion of the referees, who made their report to the Justices, at the *Easter* sessions, in 1771. The defendant continued in office, about six weeks after the date of the last note, but did not make any rate or levy

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levy in that time, by which means the plaintiff was forced to bring this action to recover the money so advanced to the defendant. Mr. Baron *Adams* ruled that the Plaintiff was clearly intitled to recover upon the third and fourth counts, for money had and received for the plaintiff's use. The validity of the notes was therefore not agitated.

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If in the same Hundred, see *pl.* 115.—Not in the same Hundred, *pl.* 125.—What Districts or Divisions are liable to be Assessed in aid, *pl.* 126.—see 43 *Eliz. c.* 2. § 3.

Order upon A. to pay 5s. and B. 8s. a week to the poor of C. held good.

Justices may tax particular persons.

See *pl.* 117.

115. **C**ASE of the parish of St. Rumbald, *M.* 2. *f.* 2. *Skinner* 258. A parish in *Colchester* being overcharged with poor, the Justices made an order that two other parishes in *Colchester* should pay to the relief of the poor within this parish, one of them 5s. and the other 8s. *per week*, and that the overseers should collect it. Exception was taken to this order, that it was not pursuant to the direction of the 43 *Eliz.* which says, others of other parishes; therefore it ought to be assessed by the Justices upon particular persons, and not generally, and so it may be done, and it has been admitted that it may be so done this term before; and also a case remembered in *Pemberton's* time where it was so ruled. But the court seemed to be of opinion that it was well enough, and according to the right course, and that the Justices are to assess the *quantum*, and then the rate is to be made by the overseers of the poor of the parish; and such was the opinion of the court. Memorandum, that in the case of the borough of *Banbury* determined in the same term, the case of a parish in *Cambridge*, *M.* 32 *Ca.* 2. was cited by *Holt*, who was then at the bar, in which, after having
2 been

been divers times argued by *Pemberton* and *Pollexfen*; it was resolved that the Justices might tax particular persons of another parish, where the proper parish is overburthened. For the words of the statute are, others of other parishes. *Skinner* 259.

116. *R. v. Knightly*, *M. 6 W. 3. Comb.* 309. A sum in gross was taxed upon a neighbouring parish for a whole year, and was objected to as unreasonable, because their ability may change: nevertheless the order was confirmed. Assessment of a sum in gross held good.

117. *R. v. East-church*, *H. 9 W. 3. 2 Salk.* 480. An original order was made at the quarter sessions setting forth, that whereas, the parish of *Dimchurch* was overburthened with poor, and that the parish of *East-church* had no poor, the parish of *Dimchurch* should be annexed to the parish of *East-church*, and that the occupiers of land there should contribute 20*l.* per ann. by equal monthly payments to *Dimchurch*, as long as that should be overburthened with poor, and *East-church* have none. To this order it was objected, that the Justices of Peace cannot alter and annex parishes to one another; and 2dly, that the sessions cannot make an original order. *Holt*, Ch. J. There are two ways by the 43 *Eliz.* to make one parish contribute to the maintenance of the poor of another, viz. The Justices may tax particular persons in aid to that parish which can't relieve its own poor, or they may assess the whole parish in a certain sum, and leave it to the churchwardens, &c. to levy the same on particular persons, which was well done in this particular case, but so much as concerns the annexing of parishes is void, and the rest good; but the court took time to advise. Justices may tax particular persons, or the whole parish.
Comb. 242; 309. See pl. 118.

118. *Corbett v. St. Mary's Lincoln*, *Vin. Abr.* tit. poor, 431. It must appear, that the parish which prays aid of another, was not able to pay sufficient sums; and there must be an assertion or adjudication, that it appeared so to them.

119. Anonymous, *M. 8 Ann. Fol.* 45. An order of sessions was made upon one parish to contribute to the poor of another in the same hundred. *Holt* Ch. J. By the statute 43 *Eliz.* it ought to be originally by two Justices of the peace, because the statute gives an appeal to the sessions. This order must be quashed. 5 *Mud.* 399. Sessions cannot make an order for A. to contribute to B. in the same hundred.
Comb. 25.

120. Case of inhabitants of *Bereugh Fen*, *T. 9 Ann. Fol.* 37. Order of two Justices quashed, because it does

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not

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not appear that the parish ordered to relieve another not able to maintain its own poor, is in the same hundred.

See pl. 123.

121. *R. v. Telfcombe*, T. 6 G. Str. 314. *Per Cur.* The order for the contributory parish to make a rate at 6d. in the pound, is ill for uncertainty, it should have been to raise for a sum certain.

To contribute
till we shall see
fit to order the
contrary not
good.

122. Case of the borough of *Marlborough*, E. 12 G. Pears Sett. pl. 165. An order was made by the Justices of the borough, for the parish of St. Peter's to pay to the officers of St. Mary's 20 s. weekly till we, the said Justices, shall see fit to order to the contrary. It was objected first, that it does not appear that the parish of St. Mary's is overburthened with poor; but over-ruled, for the order follows the words of the statute: 2dly, It is said that they are Justices of the town and borough, and it appears upon the order, that the parish of St. Mary's is within the borough, but not within the town and borough. *Per Cur.* They are Justices of both: 3dly, The order is until we shall see fit to order the contrary; whereas the act never gave the Justices such an authority; and it is in effect making a perpetual order; for if one of the Justices die or be removed, no other Justice can alter it. Quashed upon the last objection.

The tax may be
on all or particu-
lars.

123. *R. v. Borough Fen*, T. 12 G. Fort. 326. An order was made upon one parish to relieve the poor of another. 1st Objection, This is a taxation of several persons in a parish, but it should be of all the persons in a particular place or parish. 2d Objection, It does not appear but that *Borough Fen* is within the parish of St. John Baptist, in aid of which they are taxed. *Per Cur.* It seems very unreasonable that several persons in a parish should be taxed and not all: But the words of the statute are very strong. But you must shew that *Borough Fen* is out of the parish of St. John the Baptist, or the Justices have no jurisdiction; and for this objection the order was quashed.

Justices cannot
delegate their
power of assess-
ing.

124. *R. v. Marlborough*, T. 12 G. 2 Stra. 1114. Two Justices order the churchwardens, &c. of A. to assess, raise and levy 60 l. for the maintenance of the poor of B. and objection being made to their ordering such a gross sum; the court held it well in that respect according to 1 Vent. 350. Salk. 480. Comb. 309. But the order was quashed because the Justices had delegated their power of assessing and rating the parishioners to the churchwardens, &c. Whereas by the 43 Eliz. c. 2. the Justices are to make the rate on all or particular persons.

Not

Not in the same Hundred.

125. *R. v. Percivall*, T. 3 G. Str. 56. The Justices in sessions tax certain parishes in the hundred of *A.* in aid of the parish of *B.* in the hundred of *C.* Objection was made that the statute gives no authority to the sessions to charge people out of the hundred, till two Justices have inquired whether any parish in the hundred can contribute: the first application to be to two Justices, and the second to the sessions. *Parker* Ch. J. I do not see to what purpose it would be for the Justices to make an order, only to adjudge, that no parish in the hundred is able to contribute: we will presume the sessions is satisfied of that, and if two Justices should make such an adjudication, yet the sessions must inquire into the truth of it, and if no order appears, which charges any parish within the hundred, it is a sufficient ground for the sessions to act. If two Justices had charged any parish within the hundred, that would have stopped the sessions from proceeding. The sufficiency of the hundred depends on this, whether two Justices have ever charged the hundred. If two Justices should adjudge the hundred not able, yet if other two Justices adjudge the contrary, their charge would be good, and the sessions be ousted of their jurisdiction, notwithstanding their first determination. *Eyre* J. Here are two jurisdictions, that of the Justices and that of the sessions, and they are both original jurisdictions. They are different in all respects, for the two Justices have no power out of the hundred, nor the sessions in it. Order confirmed.

It is not necessary that two Justices should adjudge the hundred incapable to contribute, before the sessions can charge a parish out of the hundred.

Districts or Divisions liable to be assessed in aid.

126. 2 Salk. 486. It is said in *Vin. Abr.* 16. Vol. 431. That when inhabitants of an Extraparochial place are taxed towards the relief of the poor of an adjoining parish, the tax must be by poll, every particular inhabitant by himself; but where it is laid upon an hundred it is otherwise, because there are officers who may proportion what every body is to pay. *MSS. Cases.* The *Queen* v. the inhabitants of *Clarendon Park*, and the hundred of *Cudworth*. But at another day the court held, that the reason was, because the parishes were taxable by them-

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selves at common law, and that in the said case, the inhabitants of an extraparochial place may be taxed in general, and that they may proportion the particulars upon every inhabitant; or the tax at first may be laid upon every person by himself, but the Justices cannot appoint two persons to do this, and that the money shall be levied on such and such; and being thus appointed the order was quashed. *Ibid.*

A vill may be ordered to contribute.

127. *Anon. H. 8 Ann. For. 35.* Two Justices make an order reciting, that there are two vills in the parish, one of them very rich, and the other very poor, that the former did not pay half so much to the poor as the latter, therefore they assess the rich vill so much to be paid to the poor of the poor vill. 1st Objection, One village ought not to contribute to another, because the statute mentions parishes only. 2d Objection, The uncertainty of the reason given, *viz.* Because they do not pay half so much to the poor, without shewing that either pay any thing. *Powell J.* Sure this will come within the equity of the statute. But this order must be quashed upon the second objection; in which the whole court concurred.

Parishes in a city not to be made contributory.

128. *Case of St. Benedicts, H. 8 Ann. Fol. 43.* An order was made by two Justices to assess the parishes of *St. Stephen* and *St. Magdalen* in *Norwich*, in aid of the parish of *St. Benedic7*, which was not able to maintain its own poor. Objection was now made that these parishes are not within the same hundred; they are in *Norwich* where there is no hundred, and therefore the Justices have no jurisdiction by the 43 *Eliz. Per Holt Ch. J.* The order must be quashed.

Extraparochial place.

129. *R. v. Borough Fen, E. 10 G. Fol. 37.* An order was made by two Justices to make a place chargeable to the poor of another parish. 1st Objection, that this was an extraparochial place. *Sed non alloc'*: The act mentioned any place. 2d Objection, There was a distress warrant granted at the same time the order was made. *Per Cur.* Order must be confirmed.

Any division equivalent or synonymous to hundred is within the statute.

130. *R. v. Milland, E. 31 G. 2. Burr. 576.* Two Justices make an order for taxing the tithing of *Milland*, in aid of the parish of *St. Peter's* in the same county. Which was confirmed at the sessions, who state upon their order, that the tithing of *Milland* lies in the same liberty of the *Soke* with the said parish of *St. Peter*. It was objected, that it does not appear that the places are in the same hundred (as required by the 43 *Eliz.*), that

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that liberty and *Sols* are vague terms, and not equivalent to the known legal term, hundred, but perhaps the liberty may extend into several hundreds. But the court did not consider themselves as bound down by the particular word hundred, used in the act, but that if any division be called by any name synonymous, or equivalent to that of hundred, it must be equally within the intention of the act; but having sent the matter back to the sessions to be more particularly stated, and upon the return it appearing to be substantially an hundred, the court affirmed both orders.

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Of the Jurisdictions of the Sessions, *pl.* 131. Form of the Order, *pl.* 137. What Relations are chargeable, *pl.* 141. Penalty on disobedience to the Order of Sessions, *pl.* 149. See 43 *Eliz.* c. 2. § 7.

131. **O**RDER for the maintenance of a poor relation must be made at the quarter (not the general) sessions. *Salk.* 476. *Comb.* 418.

132. Justices in sessions must set the rate for the maintenance of poor relations themselves, they cannot delegate that authority to other persons, any more than an arbitrator can appoint another to make the arbitrement. *Stiles* 154.

Sessions must set the rate.

133. *R. v. Reeve, 7 Char. 2 Bullstrode* 344. The defendant was committed, by a Justice of Peace of the county of *Middlesex*, because, being the reputed grandfather of a poor fatherless and motherless child, maintained at the charge of the parish of *St. Giles*, and being a man of ability, refused to provide for the child, or to find sureties for his appearance at the next quarter sessions for the county of *Middlesex*. Against this commitment it was urged, that there is no such person as the law takes notice of as the reputed grandfather, for that

Only the Justices of the district, wherein the person who is to contribute dwells, have jurisdiction.

N.B. This whole case seems of doubtful authority, except that part of it which relates to the jurisdiction of the sessions.

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* But he seems
not compellable,
See pl. 141.

a bastard is *filius populi*, and the reputed father is, by the statute 18 *Eliz.* That this *Reeve* did inhabit at the town of *Eye* in *Suffolk*, that coming to *London* upon business, he was apprehended by a warrant of a person who had no jurisdiction; the appeal lying to the sessions in *Suffolk* by the statute 18 *Eliz.* It was resolved by *Jones* and *Croke* Justices, that it is very reasonable, * that he should contribute to the maintenance of the child he being a man of good sufficiency. The child resides here in the parish of *St. Giles* in the county of *Middlesex*, and the contribution is to be here; but the party which is to pay it, inhabiting in the county of *Suffolk*, the Justice there may make an order in this matter, and so cause the money to be sent up; the quarter sessions of *Middlesex* have no authority in this case. Discharged by a rule of court.

Poor relations
are not to be re-
moved from their
own parish, to
that where they
live who are to
maintain them.
See the next pl.

134. *R. v. Shermanbury*, T. 5 *W. and M. Carth.* 279. It was held by *Eyre J.* that where the relations are obliged to maintain their poor friends, such poor people shall not be removed out of their own parish where they are settled to that where those relations live; for by that means upon the death of such relations, the parish where they lived may become chargeable, which ought not to be, and therefore the poor person shall continue in his own parish, and his relations shall maintain him there.

See the preced-
ing pl.

135. *R. v. Jones*, T. 9 *Ann. Fol.* 53. Order for the grandmother to take care of her grandchildren, and by the order they have sent the grandchildren to her. *Per Cur.* They cannot send the grandchildren to her; but the Justices ought to have made a rate upon the grandmother of so much a week. Order quashed.

Order must shew
that the person
charged is within
the jurisdiction,
&c.

See pl. 137.

136. *R. v. Woodford*, E. 20 *G. 2. MSS.* Order states that the pauper is not able to get her whole livelihood, and orders her grandmother to pay, &c. Objection, that by this order the pauper does not appear an object of the sessions jurisdiction, for the act requires that she should be impotent, and accordingly enumerates several species of impotency, but the present pauper does not come within the description of any of them. Objection 2. It does not appear that the grandmother lived in the same county. The court took no notice of the first objection, but said, The first order does not state that the persons on whom, &c. lived within their jurisdiction, and it is a general rule, that where an act of parliament gives a jurisdiction, the Justices ought to shew the persons to be within the jurisdiction which they have exercised

cised over him; and though the second order (that is of sessions) recites that they were then living within their jurisdiction, (being present in court), yet that will not help the first if it be insufficient. We cannot determine the points of law, unless the order comes properly before us, and it is impossible to confirm the first order by connecting it with the second, when that first appears bad in form. See *Poors Sett.* 134.

Of the Form of the Order.

137. *St. Andrews Undershaft v. Jacob Mendes de Brêta*, The pauper must M. 13 W. 3. Ld. Raym. 699. The defendant was a Jew, whose only daughter embraced Christianity, whereupon he turned her out of his house, and refused her the least maintenance. Upon which, on complaint to the Justices at the general quarter sessions, they reciting that she was the daughter of the defendant, and that he was able to maintain her, and made an order upon him (he being very rich) to allow her twenty shillings per month, under the penalty of twelve pounds; and this order they founded on the 43 Eliz. And now it was quashed, because the Justices have not jurisdiction to make such an order, it not being within the statute, because it was not alledged that she was poor or likely to become chargeable to the parish. See pl. 140.

138. *Jenkins's case*, E. 5 Ann. 2 Salk. 534. An order of sessions was made, that the defendant should pay two shillings weekly toward the support of his father, till that court should order the contrary; which was held good, because it was indefinite and no set time limited; and if an estate should fall to the pauper, application might be made to the Justices; otherwise if a time was limited. To pay till the court should order the contrary, is a good order.

139 *R. v. Tripping*, T. 4 G. Vin. title Poor 424. Justices at the quarter sessions, upon complaint of the overseers, that *Tripping* had left his wife, and that she was become poor and impotent, and chargeable to the parish, and that *R. T.* her father-in-law was of sufficient ability; upon its being proved that *R. T.* was of ability to relieve her, ordered him to pay, &c. a week. This order was quashed for want of an adjudication that she was chargeable, and it was held that an adjudication that the person is become chargeable is as necessary in an order of the quarter sessions as in an order of Justices. Persons to be relieved must be adjudged chargeable to the parish.

140. *R. v. Litton*, E. 5 G. Sett. Poor 111. Upon complaint Most be an adjudication that the pauper is impotent.

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complaint that *A.* was deserted and impotent, the Justices adjudged and award the father to pay her so much *per week*. It was objected, that there was no adjudication that she was impotent, only in the complaining part of the order; and the order was quashed.

What Relations are chargeable.

141. The 43 *Eliz.* relates only to the maintenance of poor and impotent persons, and not to bastards who are provided for by other statutes, 5 *Ann. Salk.* 123.

Bond to save the parish of *A.* harmless from *R.* his wife and children, one of which, born at the time the bond was entered into, marries, and is not able to maintain his children; the bond is forfeited.

142. *Waltham v. Sparkes* *M.* 6 *W. & M. Skinner* 566. Obligation with condition to save the parish of *Shalford* harmless from *John Godion*, his wife and children; *Joseph* the son of *J. G.* born at the time the obligation was entered into, had a wife and children, whom he could not maintain, and the parish, by a Justice's order, was directed to allow two shillings *per week* to *Joseph* for the maintenance of him and his family. Action was brought upon this bond, and the condition was held to be broken; for though it does not extend to the grandchildren of *John Godion* become chargeable, yet their father *Joseph*, who is by nature bound to maintain them, being unable to do so, he is in that respect impotent and chargeable to the parish, and he is within the express words of the condition; and it was held that all the children of *John Godion* though born after the obligation was entered into, would be within the meaning of the condition; the intent of which was to secure the parish from any expence or damage by means of the settlement of *John Godion*, *Poors Sett.* 210.

If the father is living and unable the grandfather is chargeable.

143. *R. v. Joyce*, *M.* 6 *Ann. Vin.* title *Poor* 423. Order that the grandfather should keep the grandchild, the father being living but unable to do it; and also to pay so much more money for the time past, while he was chargeable, as well as for the time to come, was confirmed.

See the next pl.

144. *Gerrard's case*, 2 *Bulst.* 346. Question was, Whether a grandfather is bound to maintain his grandchild in law, having no portion with the grandmother? *Whitlocke* and *Croke* Justices, both agreed that if he had a portion with the grandmother, he ought to maintain the child during her life. But in this case it appeared that the grandfather and grandmother had lived together nineteen years, and though he had no portion with her, yet

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yet now by the wife's industry they were of ability. *Cress* J. thought he ought not to provide for the grandchild during the grandmother's life, but *Whitlock* J. thought that he ought. *Sed Qu.* See pl. 147.

145. *R. v. Munden*, T. 5 G. Str. 190. Order reciting that *Munden* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. *Ld. Ch. J. Pratt*: The cases which have hitherto been, were either where the Judges were divided, or where the matter did not come directly in question, or was only a case at a Judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on consideration we are all of opinion, that the son-in-law is not bound either within the words or intent of the statute, which provides only for natural parents. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature does not reach to this case. Order quashed. *Mr. Burn* subjoins an observation to his report of this case, that it does not appear by this report, whether the wife was alive or dead; that perhaps she might be dead, and thereby the relation determined; but by the following report which is evidently of the same case, it appears that she was alive at the time the order was made.

146. *R. v. Monday*, T. 5 G. Fort. 303. An order was made upon him and his wife to maintain his wife's mother. It appeared by the order that he had considerable effects with his wife, and that her mother fell into poverty after their marriage. *Per Cur.* The order must be quashed, because the son-in-law was not within the act of parliament, and the wife cannot be of ability, because her estate is a gift to the husband, and he is a purchaser for a valuable consideration. And the court observed that it would be inconvenient if the wife should have children by a former husband.—The nature of the reasons used by the court in this case of the *King* and *Monday* evidently requires the conclusion that the wife was then living, or they would be merely nugatory, or superfluous; however the subsequent report seems to put it out of the reach of doubt, that the statute does not extend to relations out of the line of consanguinity.

A person is not obliged to maintain his wife's mother, even in the lifetime of his wife.

147. Case of *Woodford* and *Lilburn*, 20 G. 2. MSS. J. L. the father-in-law of the pauper was charged with

The father-in-law of a pauper is not obliged to maintain him.

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her maintenance, and the Justices give this reason, because he had a great fortune with his wife, the pauper's mother. Sir *John Strange*, in support of the last order argued, that the word father, though *prima facie* to be understood of the natural father, yet it had been carried so far as to take in the father-in-law; for where there is a substance with the mother, he takes it *cum onere*, and must maintain the child who was supported with the substance before his marriage. Indeed where there is no substance it might be otherwise. Mr. *Henly* said here is no distinction between consanguinity and affinity; this is a debt of the wife's contracting, created by parliament, and in all cases, the husband is subject to the wife's debts, and all her necessary contracts. Sir *Richard Lloyd*, on the other side, insisted, that the statute speaks only of those related in blood, on whom nature laid an obligation. If the statute is to be construed to take in father-in-law, &c. then it must be done in all cases whether the father-in-law receives any fortune or not with his wife. Upon this principle it might as well be insisted, that a purchaser of the wife's estate ought to maintain the children, and a husband is a purchaser of the wife's substance. The instant a wife marries she loses every thing she had, for her effects are instantly vested in her husband, and the act could never intend to charge her when she has nothing. For the words are, being of ability, which express the very contrary. There is no difference whether the wife conveys away her substance by deed of gift or by act of law upon her marriage. *Per Cur.* It was determined upon this act in *R. v. Monday*, that the words father and mother meant such as were so in blood, but then that these are not chargeable in all instances, but they must be such as are of sufficient ability. But this is a case where the mother is not of sufficient ability, being married at the time of the demand, and this demand is not a charge upon the estate, but upon the person in respect of the estate; and if they are not of ability at the time when the demand arises, they are not chargeable by this act. And the present case is exactly the same with that of *Monday*, so that we are of opinion that the father-in-law is not liable in respect of any estate he had with his wife.

Divorce.

148. *R. v. Dempson*, M. 7 G. 2. 2 Str. 955. Order upon the father to maintain his son's wife after a divorce *a mensa & thoro* for adultery, was quashed on the authority of the King and *Monday*, she not being a natural relation

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lation of the father. But the court did not give their opinion upon the point of divorce. MSS.

Penalty on Disobedience.

149. *R. v. Robinson*, T. 32 G. 2. *Burr. Mansf.* 799. This was a motion in arrest of judgment upon an indictment against the defendant, for refusing to obey an order of the general quarter sessions for the county of *Stafford*, made upon him for his keeping and maintaining *James* and *Peter Robinson*, his two infant grand children, in which the breach was laid, according to 43 *Eliz. c. 2. s. 7*. It came no less than four times before the court: The indictment recites the order of sessions made on the 11th of *January*, 1757. 30. G. 2. Directing, ^{Disobedience to an order of} "that the defendant *Robert Robinson* should, from the maintenance ^{indictable.} "date hereof, weekly and every week, pay or cause to ^{See 43 *Eliz. c.*} "be paid unto the overseers of the poor of the parish of ^{2. § 7.} "*Waterfal*, for the time being, the sum of 2s. for the "relief and maintenance of his said grandchild *Peter Robinson*, and to continue such respective payments, "until further order." With which order, the defendant was duly and legally served on the 21st of the same *January*. And the charge is, "That the defendant "not regarding the said order, nor the law and statutes "of this realm, relating to the relief of the poor of this "kingdom, did not on the 21st of *January*, 30 G. 2. "nor hath since the date of the said order, weekly and "every week, or otherwise howsoever, paid or caused "to be paid unto the overseers of the poor of the "said parish of *Waterfal*, for the time being, either "the said sum of 2s. for the relief and maintenance of "said *James Robinson*, or the like sum of 2s. for the "relief and maintenance of said *Peter Robinson*, or any "part of either of the said sums; nor hath the said *Robert Robinson* at any time or times, from or since the date "of the said order, relieved, maintained, or provided "for them the said *J. R.* or *P. R.* or either of them "according to the law. But he the said *Robert Robinson*, "upon the 21st day of *January*, 30 G. 2. and continually afterwards, until the day of the taking the "inquisition, unlawfully, wilfully, obstinately, and contemptuously did, and yet doth neglect and refuse to "pay, or cause to be paid unto the said overseers of the "poor of the parish of *Waterfal* for the time being, "weekly and every week from the date of the said order, "the

Maintenance of poor Relations.

Motion in arrest
of judgment may
be made on the
Crown side at any
time before judg-
ment.

“ the said several and respective sums abovementioned,
“ contrary to the purport and direction of the said or-
“ der, and in manifest breach and contempt of the same,
“ to the great damage of the inhabitants of the said pa-
“ rish of *Waterfal*, to the evil and pernicious example of
“ all others in the like case offending.” The indictment
was found at a quarter sessions, holden the 12th *July*,
31 *G. 2.* The motion in arrest of judgment was made
on *Monday* the 5th of *February* 1759. There being a
doubt, whether the motion was in time; the secondary
certified, on the 3d of the next *May*, and the court
then held, (notwithstanding the case in 1 *Salk.* 78) That
a motion in arrest of judgment may be made on the
crown side, at any time before sentence pronounced.
Lord *Mansfield* now delivered his opinion: The objection
to this indictment is, “ That the offence is not indict-
“ able, because the act of parliament has pointed out a
“ particular punishment, and a specific method of re-
“ covering the penalty which it inflicts.” The rule is
certain, “ That when a statute creates a new offence, by
“ prohibiting and making unlawful any thing which was
“ lawful before, and appoints a specific remedy against
“ such offence (not antecedently unlawful) by a particu-
“ lar sanction, and particular method of proceeding,
“ that particular method of proceeding must be pursued
“ and no other; and this is the resolution in *Cassh's* case,
“ *Cro. Jac.* 643.” And where the offence was antec-
edently punishable by a common law proceeding, there
either method may be pursued, and the prosecutor is at
liberty to proceed either at common law, or in the method
prescribed by the statute; because there the sanction is
cumulative, and does not exclude the common law pun-
ishment. 1 *Salk.* 45. *Stephens* and *Watson* was a resolution
upon these principles in that case; keeping an alehouse
without licence was held to be not indictable, because it
was an offence at common law, and the statute which
makes it an offence has made it punishable in another
manner. There was a case in the court in *M. 28 G. 2.*
R. and Davis in arrest of judgment upon an indictment
against the defendant, overseer of the poor of the parish
of *St. Peter ad vincula*, within the liberty of the *Tower*
of *London*, for refusing to receive and provide for *Hannah*
Guthridge, a pauper removed to that parish by an order
of two justices, made by virtue of 13, 14 *G. 2. c. 12.* by
which act, the justices are impowered to remove a pau-
per to the place of his legal settlement. But there is no
provision

provision by that act to punish the officer, in case he refuses to receive the pauper; so that the only remedy was at common law, to indict him. Afterwards by 3 & 4 W. & M. c. 11. it was enacted, that if an officer refuse to receive a person removed by an order of two justices, he shall forfeit 5*l.* to be recovered in a summary way. It was objected, "That this was a matter not indictable, because it was a new offence created, and a particular method appointed by this last-mentioned act. On the other hand it was said, that notwithstanding the remedy given by this last-mentioned act, the common law remedy indictment remains, and the officer of the poor may be proceeded against either way." The court held the offence to have been indictable, and discharged the rule to shew cause, why the judgment should not be arrested, for they held the offence to have been indictable after the act of 13, 14 C. 2. c. 12. and consequently not a new offence originally created by the 3 & 4 W. & M. c. 11. So in the present case, a remedy existed before the statute of 43 E. lix. for disobedience to an order of sessions, is an offence indictable at common law. Here the relief is to be assessed and directed, by order of sessions, and a particular proceeding in a summary way is prescribed by the act, as a particular sanction and method of punishment in case of failure: But it is to be presumed, that the legislature then knew and considered "that disobedience to an order of sessions, was an offence indictable at common law." So that they must have intended that there should be, and there actually are two remedies in the present case: One to proceed by way of indictment, for disobeying the order where the weekly payment is neglected or refused to be made, the other to distress for the 20*s.* penalty after the expiration of the month. The former has been taken in the present case; and there is no doubt but an indictment will lie for disobeying an order of sessions. But notwithstanding that here are two remedies given, yet it would be extremely oppressive to take the remedy by indictment, if there are no circumstances which obstruct the proceeding in the shorter way of summary remedy: this would indeed be very wrong and unreasonable, where the summary remedy can be put in practice. But in some cases it may be impracticable to proceed in the summary method by way of distress, as if the party upon whom the order is made be gone out of county; which is said to be the case here, in which case the penalty cannot be levied by distress.

Maintenance of poor Relations.

distress and sale, nor the offender committed by the Justices. And there may also be a disobedience to the order, even before the month is out; and the forfeiture is only 20 s. for every month which they shall fail: however, that would be too severe to indict for disobedience to the order, with such very great haste, as not to wait till the month should be expired. By 43 *Eliz. ch. 2. § 2.* it is enacted, "That the old churchwardens and overseers shall account for the money in their hands, and shall pay over the balance to the churchwardens and overseers upon pain of forfeiting 20 s. for each default." Yet there was a case in *P. 20 G. 2. B. R. R. and Bill* where two overseers were indicted for not obeying an order of sessions, whereby they were ordered to pay over the balance of their accounts to the new churchwardens and overseers. In the case that has been mentioned of *R. v. Boys, Trin. 27, 28 G. 2. B. R.* there was no other remedy but by way of indictment. It was an indictment before the Justices of the liberty of *St. Albans*, for not obeying an order of sessions, whereby the defendant was ordered to pay the costs of appeal against a poors rate, which by 17 *G. 2. c. 38.* is to be recovered in the manner as costs upon an appeal against an order of removal, which by 8, 9 *W. 3. ch. 30.* are recoverable by distress and sale, (or commitment where no distress is to be had) where the party lives out of the jurisdiction (by warrant of some Justice of Peace for the place where the party inhabits;) but if the party lives within the jurisdiction (which *Boys* did) there is no other remedy but by way of indictment; and on demurrer judgment was given for the king. In that the case seems to be exactly parallel, and in point with the present case; for that was a case where the summary method could not be used, because the defendant inhabited within the jurisdiction, and the summary remedy is given only against such as live out of the jurisdiction. So that the particular remedy failed, and an indictment consequently lay. The true rule of distinction seems to be, that where the offence intended to be guarded against by a statute, was punishable before the making of such statute, prescribing a particular method of punishing it; there such particular remedy is cumulative, and does not take away the former remedy: but where the statute only enacts, "That the doing any act not punishable before, shall for the future be punishable in such and such a manner;" there it is necessary, that such particular method, by such act prescribed, must be specifically pursued, and not the common law method of an indictment.

C H A P. VI.

Bastards.

Jurisdiction of Justices out of Sessions, *pl.* 150.

By whom an Order of Bastardy shall be made,

pl. 162. Of the Complaint and Examination,

pl. 164. Of the Summons, *pl.* 167.

Description and Adjudication, *pl.* 169. Evidence,

pl. 177. Order of Maintenance, *pl.*

194. Appeal, *pl.* 208. Jurisdiction of the

Sessions, *pl.* 212. Quashing of Orders in

Bastardy, *pl.* 218. Punishment of the Mo-

ther, *pl.* 219. And Settlement of Bastards,

pl. 220. Bastards born under Certificates,

pl. 227. See *St. 18 Eliz. 3 Char. 9 Geo.*

150. **T**HE recognizance taken upon the 18 *Eliz.*

c. 3. ought to be in the disjunctive to perform the order by the Justices then made, or to appear at the next sessions, and to abide the order there, and one Justice by his warrant may commit in this case. 2 *Bulst.* 343.

151. An order was made and directed that security should be given for the performance of it, and it was quashed because the statute directs that it be in the alternative, either to perform it or to appear at the sessions. 2 *Shaw.* 258.

152. *Webb v. Cook M. 19 J. Croke J. 535 and 625.* Prohibition to stay a suit in the ecclesiastical court, for defamation and calling *Cook* an whoremaster, and saying that he had a bastard, and shews that the defendant who sued in the spiritual court was sentenced for this cause of having a bastard, and ordered to keep the bastard, at the sessions at *Norwich*; and yet they would examine this again, in the spiritual court. Upon this suggestion, the defendant demurred; and it was adjudged that the prohibition should stand, for being sentenced to be the reputed father by the Justices.

Justices at sessions, which is by authority of the statute law, it cannot be now impeached in the spiritual court or elsewhere, and all are concluded to say the contrary, until it is reversed.

Order that churchwardens should seize so much of the defendant's goods as they should think proper is wrong, it should be as much as the Justices should think proper.

See pl. 150, 151.

153. *R. v. Chaffey*, E. 2 Ann. Ld. Raym. 838. Several orders were made by the Justices in *Wilts*, against the defendant, as the putative father of a bastard child. Motion was made to quash one of them, by which the churchwarden and overseers are directed to seize what they themselves should think proper of the defendant's goods, to secure the parish from the maintenance of the child; because by 13 & 14 Ch. 2. c. 12. the Justices have only authority to make an order enabling the churchwardens, &c. to seize what the Justices should think proper, and this order for this reason was quashed. Then exception was taken to the original order, in which it was ordered that the defendant should give security for payment of the sum by them the Justices imposed for the maintenance of the child, when it did not appear that the defendant had disobeyed the order in point of payment; whereas by the 18 Eliz. c. 3. an order for security cannot be made till after contempt. And for this reason the order was quashed as to that part, and was confirmed as to the residue; and, *per Cur.* When an order is confirmed in this court, an attachment lies for non-performance of it, and therefore this court will not take security of the party for the performance of it. But if the original order had been at sessions, not removed hither, the court would have taken security of him to appear there.

The Justices out of sessions may imprison for refusal to enter into recognizance, but the Justices at sessions on appeal cannot.

154. *R. v. West*, E. 4 Ann. Ld. Raym. 1157. The defendant was adjudged by two Justices, the father of a bastard child, pursuant to the 18 Eliz. and ordered to pay; and upon appeal the order was confirmed at the sessions, and for not paying the money he was committed; and now was brought into court by a writ of *Habeas Corpus*. Holt Chief Justice: The sessions proceed by way of appeal in this matter, by the power given them by the 18 Eliz. but by that statute they have no power to commit for disobedience to their order. That statute directs a recognizance to be taken by the two Justices who make the order, which if the party will not enter into, they (the two justices) may commit him. Indeed if the sessions proceed originally by the 3 Charles the First, they may commit for non-performance of their order

order. It is immaterial to the present point whether the Justices did take a recognizance or not, because their neglect would not give the sessions a power to commit, which the statute does not give them. The defendant was discharged. 2 *Bulst.* 341.

155. *R. v. Tenant*, M. 13 G. Ld. *Raym.* 1423. Order of Justices is discharged at sessions, where A. is bound to appear at the next sessions. The Justices cannot make a fresh order upon A.
Order was made upon the defendant by two Justices to maintain a bastard child, as being the reputed father; which order, after the merits were fully heard at the sessions, was there discharged. And the defendant was bound to appear at the next quarter sessions, as it was supposed under an apprehension that better evidence might be found against him. After this, the same two Justices made a new order upon the defendant to keep this bastard child. The last order of the two Justices was now quashed by the court, because they have made an order upon the defendant, which was afterwards regularly discharged upon appeal upon hearing the merits. The defendant was legally acquitted, and cannot be drawn in question again for the same fact. See also *Pridgeon's Case*, H. 9 Car. *Croke Char.* 353. in which it was determined that the statute 3 Car. doth not aid in this case, nor enable one sessions to alter what was ordered in a former sessions.

156. *R. v. Messenger*, Temp. *Hardwicke* Chief Justice, MSS. Mr. *Abney* moved to quash an order of bastardy made by two Justices of the liberty of the *Tower of London*, and confirmed at the sessions held for the liberty; whereby the defendant was adjudged the father, &c. on the 18 *Eliz.* for that it did not appear in the original order, nor that of the sessions, in what county the liberty of the *Tower* was; That the party might know where to appeal: But it is only in the margin, "to wit, liberty of the *Tower of London*." And (2) for that the Justices in the latter part of the order have ordered the defendant generally to give security to perform the said order, when by 18 *Eliz.* he has his election either to give security or enter into a recognizance to appear at the next quarter sessions, &c. *Clark* in support of the order said the liberty of the *Tower of London* is a distinct liberty, and in all respects the same as to the present case as a county. It has a separate commission of the peace, officers of its own, and quarter sessions, and 3 Car. 1. c. 4. referring to 18 *Eliz.* gives Justices of a liberty the same jurisdiction as Justices of a county, which is still plainer from 6 *Geo.* 2. c. 31. As to the

Not necessary that an order should shew, in what county the liberty is—order that the putative father shall give security is not good.

2d objection, he said, as touching the security, that the defendant had determined his choice by giving security, which was at least an election by implication. Lord *Hardwicke* Chief Justice: An express appeal is not directed by the 18 *Eliz.* but arises from a construction of that act. And I do not know whether the want of an averment in what county the liberty was, be an exception on that statute; however that is fully cleared up by 3 *Car.* 1. c. 4. so that as to that exception the original order is good. But the 2d objection is fatal; for by 18 *Eliz.* c. 3. the putative father has an election to enter into a recognizance or to give security; and such order can be made only on default: Therefore as to that the original order must be quashed, though confirmed as to the first part on the first exception, and the order of sessions confirming the original order must be quashed *in toto*. The court agreed, and further said the reason why the county should be in the margin, was to shew the fact arose in the county wherein the Justices have jurisdiction, not that the party may know where to appeal. *N.B.* No recognizance was taken of the defendant to appear at the next general quarter sessions for the liberty, &c. the part of the original order as to the security, and the order of the sessions *in toto* were quashed. And the reason is, for that the defendant was bound by that part of the order confirmed as to the first exception, whereby and for the not performing of which he might be committed. See *R. v. Woodchester*.

Justices out of sessions cannot make an order to acquit or discharge.

157. *R. v. Jenkin*, T. 9 G. 2. *Rep. Temp. Hardwicke* Chief Justice 301. *Ld. Hardwicke*: An order of bastardy made by two Justices is removed hither, and is to this effect: Whereas complaint has been made to us by the owners of the parish of *Christ Church*, that *M. B.* single woman was delivered of a bastard child, &c. and hath charged *Jenkin* with being the reputed father thereof, &c. We therefore, &c. both dwelling next to the said parish have taken and considered the examination, and heard upon oath the proofs alledged before us, do adjudge that he is not the reputed father of, &c. and do acquit him of the same. The objection is, that these Justices have no such authority to give a judgment of discharge; and we are of that opinion. Their whole authority out of sessions in matter of this nature arises by the 18 *Eliz.* c. 3. and the power given thereby is not of judicature, but merely to proceed by way of order, as in many other cases. And therefore the words

of

of the statute are, that they shall take order; and accordingly it has been treated in this court as an authority to them to make orders, and not as giving them a jurisdiction to convict or acquit the parties, for the orders have been always made in *English*, nor the evidence required to be set forth, nor to set forth, that the party was summoned; but looked upon to be sufficient to say in the words of the statute, upon examination of the cause and circumstances, and if it had been taken to be a proceeding to convict or acquit they would all have been necessary: The question then is, What words in this statute warrant the Justices in making such an order as this, which is neither for the relief of the parish, nor for the punishment of the party, which are the only two sorts of orders which the statute empowers them to make? If this matter had been examined at the sessions, it was said that they might have an order to discharge him, which would be a good order and final; and that therefore by parity of reason the two Justices might do so, for it was said that the words of the statute which give sessions jurisdiction refer to the manner of proceeding by two Justices. And it is true that in *Stater's Case*, Cro. Car. 470. and in *Pridgen's Case*, it was held that two Justices, or a second sessions, could not reverse an order of discharge made at the sessions; so likewise in *Tenant's Case*; Two Justices charged the defendant who appeared and was discharged, and an order made afterwards by two other Justices to charge him, was quashed, because he had been discharged at the sessions. But none of these cases come up to this: for in all of them, the order which was taken to be final was made at the sessions, which is the last resort in all these cases: And therefore it was rightly resolved, That when their opinion was given it should not be drawn over again, by the same court or by two Justices. It would be absurd that when two Justices have power by law to make original orders, and the sessions have power upon appeal from those orders, as well as by original application, that two Justices should have a power to alter their orders, when those very orders of alteration might be reversed by the sessions. The statute *Elix.* gives the parish no appeal, and the appeal for the party accused arises only from his being bound over to the sessions; but if the Justices might make a final order of discharge, there is no method for the parish to appeal; but would be concluded for ever,

Illegal imprisonment.

A woman had a bastard, and having afterwards married refused to maintain the child.

*2 Sir J.S.
1120.

without relief. By the whole court the order must be quashed. See 2 Str. 1050.

158. *R. v. Sculby*, *M.* 15 G. 2. *MSS.* A. took a bastard child to nurse, and being summoned by a Justice of Peace was required to tell the name of the father, and to give security; both which he refused, upon which the Justices committed him. On motion for an information against the Justices, the court refused to grant it, but said he had done wrong in committing A.

159. *R. v. Ellen Taylor*, late *Bent.* *Bur. Mansf.* 1679.

She was brought up by *Habeas Corpus* from *Lancashire*; having been committed to the house of correction at *Manchester*, for disobeying an order of two Justices "adjudging her child to be a bastard, and ordering her to maintain it, by paying 8 d. a Week for so long Time as the child should be chargeable to the parish;" there to remain without bail or mainprize, except she shall put in sufficient surety, "to perform the said order, or else &c." or be otherwise discharged by due course of Law. She was unmarried when the child was born; but was now married to *Taylor*. *Ld. Mansfield.* 1st. A *feme-covert* is liable to be prosecuted for crimes committed by her. This woman has disobeyed the order of the Justices: and the 18 *Eliz. c. 3.* prescribes the punishment here inflicted upon her. There is no need to summon the husband, in a criminal prosecution against the wife. 2dly. 'Tis within 6 G. 1. c. 19. s. 2. She is committed for an offence; and for want of sureties. 'Tis therefore within the provision of that act, and a legal commitment: And it is better for her than a commitment to the common gaol.

Mr. J. Wilmot had no doubt about it. 1st. The 18th of *Eliz.* expressly considers the producing bastards, as an offence: Not only the getting or bearing the child, but the leaving it to be a burthen on the parish, and defrauding the relief of the true poor of it. Therefore the Justices may order a proper punishment; and also take order for the maintaining the child, in relief of the parish. They may do either, or both. Matrimony does not discharge the crime: She is still the object of the law, as to criminal jurisdiction. Such was the case of the woman selling gin.

There was no need to summon the husband. The husband is not liable for the criminal conduct of his wife. 2dly. And if it be a crime, she is a criminal offender within 6 G. 1. and may be committed to either prison, as the Justices think proper. And it is for the ease, benefit, and advantage of the party committed, to send her to the house

house of correction, rather than to the common goal. The order mentioned by Mr. Foley was made upon a *Feme covert* "to keep the grandchild," but such orders made upon parents and children "reciprocally to maintain each other," are not upon the foot of criminality; but to give a moral obligation a legal efficacy. As to the conclusion of the commitment—The words of the act are pursued. The addition of—"and until discharged by due course of law;" is only *nimia cautela*, and *non nocet*: It cannot vitiate the former part of the order. Mr. J. Yates concurred. 1st. All offences are personal. And no change of the offender's circumstances can discharge her. The husband was no object of this law: therefore there was no need to summon him. 2dly. It is good within the 6 G. 1. though it had been bad under 18 Eliz. Mr. J. Aston concurred likewise. *Per Cur.* unanimously. Remanded.

160. R. v. Chandler, M. 11 G. Str. 612. Indictment for secreting a woman big with an illegitimate child, so that she should not be had to give evidence about the father. The defendant demurred: And by the Court: Judgment must be given for the defendant, for the child cannot be illegitimate before it was born, there being always a possibility that it may be born in lawful wedlock; and by this act the woman is not to be compelled. *Ld. Raym.* 1368.

Indictment for secreting a woman big with an illegitimate child.

161. R. v. Fox, M. 30 G. 2. MSS. Motion to quash an order of bastardy; objection that Justices had ordered the putative father to give security to perform their order. *Per Cur.* It is bad on the 18 Eliz. and the 6 G. 2. c. 31. extends only to cases where women are enflent.

NB The Statute of 6 G. 2. c. 31. relative to women who are enflent

By whom an Order of Bastardy shall be made.

162. R. v. Butcher, T. 7 G. Str. 457. An Order of bastardy in these words. We A and B two Justices of the borough of Lime Regis, residing within the limits where the parish church is, within which parish the child was born, do, &c. and was quashed, because not an averment where the child was born, and must be stated to be made on such complaint.

Order of Justice residing within the limits of the parish where the child was born, not good.

163. R. v. Skinn, E. 15 G. 2. MSS. 2. An order of bastardy confirmed at the sessions was removed *Etter* by *certiorari*; and the following exceptions taken. 1st. That it does not appear, that the Justices who made the order were Justices in or next the limits where the parish

Justices in or next the limits of the parish church. Joint maintenance. Three pounds towards the expenses of the parish. Sessions award costs to be taxed by the Clerk of the Peace.

Bastards.

church is, as directed by 18 *Eliz. c. 3*. Second, That the maintenance is joint for both children, 4*s.* a week from 16th September during so long as the two female bastard children shall be chargeable, that it ought to be so much for each, for if one died, yet the defendant would be chargeable with the 4*s.* a week. Third, That 3*l.* is ordered to be paid towards the expences of the parish, on account of the said bastard children, and it don't appear what those expences were; and to the order of sessions it was objected, that they award costs of the appeal to be taxed by the clerk of the peace on pain of contempt of the court, which they have no power to do. To these objections it was answered: 1st, That the words of the statute (Justices in or next the limits) are only directory, and so were held in *R. v. Rooke*. So upon the 13 & 14 *Car. 2.* Justices of the division have been held only directory: So upon the 43 *Eliz.* overseers are to be appointed within one month after *Easter*; that was held to be only directory in *R. v. Sparrow*, and in *R. v. Maurice*, upon an appointment of overseers Justices in or near the division held it to be directory: So in the case of the duke of Beaufort, and on the Gauge act; the Justices lived 15 miles distant, and held that was only directory. 2d, If either of the children die, he is discharged, for it is to pay so long as the two children shall be chargeable. 3d, They need not enumerate the several expences; but say the expences in general is sufficient. As to the order of sessions, the sessions have no power to make such order as they think fit; but however that is, the order of sessions is at present immaterial. The court took time to consider of it, and afterwards gave their opinion, that the order of Justices is good, and also the order of sessions; except as to the awarding costs to be taxed by the clerk of the Peace, so confirmed the order of Justices and of sessions, except as to the costs, and that they quashed, 164. *R. v. Baker, M. 19 G. 2. MSS.* 2. Exceptions to an order of bastardy, 1st, It is not said to be made by Justices in or next the limits, *Answer*, These words in the act are only directory. 2d, It is an extraparochial place, it appears the child was born in the foreign of Rygate, *Answer*, It is alledged to be within the parish, the foreign of Rygate is the parish of Rygate. 3d, It does not adjudge the child was born within the parish, *R. & Childers, Trin. 3 & 4 G. 2. R. & Willy. Mich. 8 G. 2.* 4th, It does not adjudge the child is chargeable to the parish, *Answer* to the 3d and 4th, the order is infixed thus: The order

See pl. 164.

Extraparochial

place.

See pl. 163.

order of us *A. B.* and *C. D.* Justices, &c. concerning a bastard child, born in the foreign of *Rygate* in the parish of *Rygate* and chargeable thereto; of which the churchwardens and overseers of the foreign of *Rygate* have made complaint. *1 Vent. 87. 5th.* It is not said to be made upon complaint of the churchwardens and overseers of the poor of the parish. *Answer.* It is not necessary; which was allowed by the court. *Ch. J.* By its being concerning a bastard child, &c. of which the churchwardens and overseers of the foreign of *Rygate* have made complaint; it seems to me under the complaint, and not any adjudication, that the child is born in, or become chargeable to the parish, and if there is no adjudication that the child was born in the parish, the exception is good. The 1st exception was over-ruled in *R. & Skin.* The mentioning the child to be born in the parish, is only in the title of the order and complaint of the churchwardens and overseers. Upon the 3d exception therefore the order was granted.

Complaint to and Examination by the Justice.

165. *R. v. Nottingham, E. 10 G. 2. MSS.* Order of bastardy must be made on complaint of the parish where the child is born, and must be stated to be made on such complaint. Complaint necessary.

166. *R. v. West. T. 3 Ann. 6 Mod. 180.* Order of two Justices reciting that upon examination upon oath before one of them of the mother of a bastard child, it did appear that *A.* was the father, therefore they adjudge him to be so, and order him to pay, &c. *Per Cur.* The examination is a judicial act, and ought to be by both, if indeed they be both present, and one only of them examines, it is sufficient. Examination must be by both justices.

Summons.

167. *R. v. Hawkins, T. 7 G. Poor Sett. 127.* In the order of bastardy it was not said that the defendant was summoned, or had notice, or was heard. *Per Cur.* Not requisite where the order is made by two Justices, otherwise had it been originally made at sessions. But see *pl. 168.*

168. *R. v. Clegg, M. 8 G. 1 Str. 475.* An original order of bastardy was made at the sessions, in which it was not mentioned that the defendant was summoned or appeared. In an original order of sessions it is not necessary that it should appear that a person was summoned.

Bastards.

appeared. Ch. J. From an order of this nature made by two Justices, a person may appeal to the sessions; unless a person be summoned he may be condemned though perfectly innocent, by an original order of sessions, from which there is no appeal. *Eyre Justice: (Pows absent)* It not appearing, that this order was made in the absence of the party; I think we must take it to be a regular proceeding, as in *Peckham's Case, Carth. 406.* Where the court said that where a summons was necessary, they would presume there was one, unless the contrary appeared, for all jurisdictions are *prima facie* to act according to law. *Fortescue Justice:* Are we to suppose that the sessions have proceeded contrary to right and justice? And that too in a case where they have undoubted jurisdiction; as in the case of servants wages, the jurisdiction is only in husbandry, and yet orders have been held good where it did not appear that the service was in husbandry; for the court said they would intend them to be so, unless the contrary appeared. *Salk. 442.* Ch. J. I have often heard it said, that nothing shall be presumed one way or the other, with regard to an inferior jurisdiction. The case with regard to wages was always thought extraordinary, and in Lord Parker's time was actually contradicted. In *R. v. Helling, adjourned. T. 12 G.* It was mov'd and confirm'd without opposition.

Description and Adjudication. See *pl. 180.*

Child of a certain woman not good description.

169. *Southwell and Sneedon, M. 10 Ann.* Order of removal of a bastard child quashed for want of saying the child of a woman unknown, as she was not described by any name, nor otherwise than as a certain woman, *Fort. 313.* Same resolution *Saundridge and Luton, H. 12 Ann.*

To pay money disbursed. Necessarily intended by the churchwardens, &c.

170. *R. v. Smith, H. 11 Ann. Poors Sett. 64.* Two Justices make an order upon him (as the reputed father of a bastard child) to pay 40 s. for money disbursed, but does not say by whom. *Per Cur.* It is necessarily intended, by the churchwardens. Another objection was, that the order was likewise to pay 1 s. a week till the child is eight years old, instead of as long as the child shall be chargeable. *Per Cur.* As to the father's taking him, he ought to have done it at first, and his suffering the order to be made shall be deemed a refusal in law; besides he shall not be then suffered, he may sell him or make away with him, as too often happens.

Sed Qu. See Title maintenance.

Sex or name must be mentioned.

171. *R. v. England, H. 8 G. Stran. 503.* Two orders of bastardy were returned, one made by two Justices, and

and an original order made at the sessions; and were both quashed. The first because the sex of the child, its name were not mentioned in it, and the order of sessions was quashed, because there being an order of two Justices before, the sessions had no jurisdiction but upon appeal.

172. R. v. Godfrey, E. to G. Lord Raymond 1363. An order made upon the defendant to maintain a bastard child was quashed, because, though in the complaint it was alledged that the child was born in the parish of Hitchin in Hertfordshire, yet there was no adjudication by the Justices, nor any words of the Justices from whence it could be collected in what parish the child was born. An order was quashed E. to Ann. upon the same exception.

173. M. 3 to G. Cas. Sitt. 150. Motion to quash an order of bastardy, because not said the child was chargeable to the parish, but to an hamlet. Per Cur. If it was an hamlet that maintained its own poor it had been good, but this not appearing, it was quashed.

174. R. v. Willy, M. 8 G. 2. MSS. Order upon defendant adjudging him to be the father of a bastard child begotten on the body of Ann Parry, required the mother to maintain the child till seven years old, and that defendant should pay 1 s. per week during that time, and at the end of the term, defendant should pay the overseers of the poor of Brucknall in the county of Somerset (where the child was chargeable) the sum of 3 l. to bind the child apprentice. Per Cur. The Justices have authority to order the father to pay a gross sum for the expence of the woman lying in (Salk. 124.) for this is for the immediate indemnity of the parish. But it has been often determined that they cannot direct a sum of money to be paid at a future day for what perhaps may never be necessary, and the order was good in all other points, yet it must be quashed quoad this. But the order sets forth, that complaint was made that the child was born within the parish of Brucknall, which the Justices adjudged had become chargeable there. Objection; That they have not adjudged that the child was born within the parish. Per Cur. The order is bad in toto for this fault. The birth is the foundation of the jurisdiction, and this must be directly adjudged; the complaint might be false, and for what appears the child might be chargeable to the parish only as a foundling, not born there. We cannot take orders by intendment. If Justices exercise a jurisdiction, they must shew themselves intitled to it. Salk. 478. Inhabitants of St. Giles's Cripple-gate and Hackney. Salk.

ad. ad. illud ad W. ad. ad. to show Must be an adjudication in what parish child was born.

Chargeable to an hamlet. See pl. 164.

The reputed father may be ordered to pay a gross sum at a future day, for what perhaps may never be necessary, as to bind the child out apprentice. See Comb. 442.

Birth must be adjudged to be within the parish to which relief is ordered

Bastards.

479. pl. 26. Inhabitants of *Berry v. Arundel*, S. P. adjudged upon the want of an adjudication of the last place of legal settlement. *R. v. Godfrey*, P. 10 G. 1. S. P. adjudged. See *Vent.* 336.

What shall be the words of the Justices.

175. *R. v. Gravesend*, E. 15 G. 2. MSS. Two exceptions were taken to an order of two Justices concerning a bastard. 1. That it is no otherwise affirmed that the child was born at G. than by a Whereas, which is recital only. 2. That the reputed father is ordered to pay a sum in gross for maintenance and other incident charges. *Per Cur.* The whole order is the words of the Justices, and in this case a sufficient adjudication of the fact. As to the other objection, if it had been for maintenance only, it would have been too general; but as it is for incident charges too, it is good, and like the case in *Salk.* 124. *Sid.* 326.

In Rex v. Pitt
It was determined that there must be an adjudication.

Adjudication that the child was baptized in the parish, and that 36 l. be paid, part whereof had been already expended for maintenance of the child and other incident charges, held good.

176. *Moravia*, E. 15 G. 2. MSS. 2. Exceptions were taken to an order of bastardy. First, That it recited the child was baptized in the parish and not adjudged that it was born there. *R. v. Haslop*. Second, That Justices adjudge 36 l. to be paid, part whereof had already been paid for the maintenance of the child and other incident charges and expences. But those exceptions were overruled; for *Per Cur.* the provision of the statute of *Eliz.* was, that care should be taken to relieve the parish where the child was born, and for that purpose the Justices were to make provision according to their directions; therefore it is necessary to appear in what parish the child was born, their jurisdictions arising from thence; and further, they are to charge the reputed father or mother for the maintenance of the child, and as the order says, she was delivered of a child, baptized in the parish that by a reasonable construction may be taken to be the birth of the child, and as to its being a recital, that is sufficient; for in orders of removal it is, *Whereas upon complaint*, and that is looked upon as affirming a fact done; so whereas such a child was baptized in such a parish, is a sufficient affirmation of the fact; as to the 36 l. for maintenance and other incident charges, these words *other incident charges* must be incident to the maintenance, and the rather, as a part whereof is already paid. *R. v. Blackwall*, N. B. Mr. J. Wright said that at first he was of a different opinion, and thought the words *incident charges* extremely general; but in looking into it, he found there were orders as general as this is. The order was confirmed.

What

What Evidence shall be admitted in Proof of Bastardy.

177. If a man marries his cousin, within the degrees of spiritual affinity, the issue is not a bastard before divorce. 39 E. 3.

178. *Roll's Abr.* 358 If a woman has a child, her husband being within fourteen years of age, it is a bastard. *Brooks Abr.* Tit. Bastardy, pl. 26.

179. *Allop v. Bowtrell, M. 7 J. Croke Jam.* 541. The question was whether a woman being delivered of a child forty weeks and nine days after the death of her husband, the child shall be a bastard. It was proved that her deceased husband's father did much abuse her, and caused her to lie in the streets, and three physicians (two of them doctors in physick) made oath that the child came in time convenient to be the child of the party who died; and that the usual time for a woman to go with child is nine months, at thirty days to the month, and ten days. And that by reason of want of strength in the woman or child, or by ill usage, she might be a longer time, to the end of ten months or more. And the physicians farther affirmed that a perfect birth may be at seven months, according to the strength of the mother or child; and it may be deferred by accident, which is commonly occasioned by infirmities of the body, or passions of the mind; and the child was adjudg'd legitimate.

Birth of a child may be considerably accelerated or retarded by accidental causes, which the law will take notice of.

180. *R. v. Colbert, E. 1 W. & M. Comb.* 103. An order made by the Justices of peace was quashed, because it was made on an affidavit brought to them, without the examination of witnesses; and 2dly, because the defendant was ordered to pay a sum in gross, for the charges that the parish had been at, &c. without shewing how or for what.

Order must not be made on affidavit only.

181. *R. v. Albertson, M. 10 W. 3. 2 Salk,* 483. Order of two Justices which was confirmed at the sessions, was to this effect, that *Mary Spencer* wife of *J. Spencer* was on the 20th of *March* 1695, delivered of a male bastard child which was likely to be chargeable, &c. and whereas it appearing to us that the said *J. Spencer* was not within the King's dominions when the said child was begotten or born, and whereas it appears that *Albertson* had carnal knowledge during the absence, &c. and that he begot the said child; we therefore do adjudge him to be the

Justices have jurisdiction where the child is born in wedlock.

reputed

Order reciting
that husband was
beyond sea when
the child was be-
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reputed father, &c. Several exceptions were taken, 1st, That the statute 18 Eliz. does not extend to this case, because by that the Justices have no jurisdiction but where the child was born out of lawful matrimony. 2dly, If this woman had been delivered alone of a child without crying out for help, this would not have been felony within the statute 21 Ja. though no proof could have been made that the child was born dead. 3dly, That it is impossible that there should be a reputed father, when there is a known father of whom the law takes notice; and though the child may be a bastard as to any right of inheritance, yet that is not sufficient to bring this matter under the consuance of the Justices of peace by virtue of this statute, 18 Eliz. 4thly, That it is only said that the husband was not within the King's dominions when the child was begotten or born in the disjunctive; also it doth not appear that the husband was not in England during the time intermediate between the begetting and birth. *Per Cur.* When a child is born in adultery the law takes notice of the husband; it is born out of the limits of lawful matrimony. The statute of James being a penal statute must be taken strictly; he is a bastard who is born of a man's wife, while the husband is at and from the time of the begetting to the birth, is beyond sea; in case of a real action by him the tenant may plead general bastardy, and on a writ to the bishop he will certify him to be a bastard; bringing then a bastard to descent, there is no reason why he should not be a bastard as to all other intents, and particularly a bastard within the 18 Eliz. which is a remedial act. But this order must be quashed because it does not appear, that the husband was beyond sea during the whole space between the begetting and the birth of the child. 5 Mod. 419. *Carth.* 469.

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182. *R. v. Murrey*, M. 3 A. Salk. 122. If the husband be beyond sea during the whole time of his wife's going with child, the child is a bastard, and because that did not appear by the order it was quashed.

183. *St. George and St. Margaret's Westminster*, M. 5 A. Salk. 123. When a woman is divorced a mensa et thoro, the children she has during the separation are bastards, for we will intend a due obedience to the sentence unless the contrary be shewed; but if husband and wife without such sentence part and live separate, the children shall be taken to be legitimate until the contrary be proved, for access shall be intended. *Coke Litt.* 235. A.

184. *R. v. St. Brides, E. 3 G. Stra. 51.* *A.* married *B.* and lived with her five years in the parish of *St. Brides* and had by her four children who were all provided for, at the end of the five years he left his wife and married another woman, with whom he lived somewhere in *England*, but he never saw his first wife *B.* from the time of his going away from her. *B.* after the separation having heard nothing for a long time from *A.* married a second husband by whom she had eight children in the parish of *St. Andrews*, who all went by the name of the second husband, three of which survived. The sessions presuming that the second marriage is void *ab initio*, adjudged that her settlement and that of her three children is in the parish of *St. Brides* where the first husband lived, as deeming them the legitimate issue of the marriage. The court quashed the order as to the children, but confirmed it as to the wife; because the second marriage being absolutely void, her settlement is that of her first husband: and it being adjudged that the first husband had no access for seventeen years, no presumption shall be admitted, but that these are the children of the second marriage, and they not being born in the parish of *St. Brides*, nor having dwelt there forty days, can have no settlement in *St. Brides*.

Children born under a second supposed marriage during the life of the first and legal husband are bastards, if it appears that he had no access.

185. *R. v. Broune, T. 2 G. 2. Stra. 811.* Upon an order of bastardy it was stated that the husband had been absent six years, and that during his absence the defendant had carnal knowledge of the wife, and therefore they adjudge him to be the putative father; but not allowed by the court a sufficient reason, and the order was quashed.

A. had carnal knowledge of the wife of *B.*

186. *Lomax v. Holmden, M. 6 G. 2. 2 Str. 940.* The question at bar in ejectment was, whether the lessor was son and heir of *G. Lomax, Esq.* deceased, which depended on the question of his mother's marriage, and that being fully proved, and evidence given that the husband was frequently at *London* where the mother lived, so that access must be presumed; the defendants were admitted to give evidence of his inability from a bad habit of body. But their evidence not going to an impossibility but an improbability only, that was not thought sufficient, and there was a verdict for the plaintiff.

Improbability that the husband was the father not sufficient to bastardise the issue.

187. *R. v. Inhabitants of St. Peter's, E. 8 G. 2. Burr. S. C. 25.* Two Justices remove *Joseph*, the son of *Joseph Haighington* from *St. Peter's* to old *Swinford*, as being a bastard born on the body of *Hannah Aske* at old *Swinford*. On the appeal the sessions take the examination of *Joseph Haighington*,
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Haighington, who gave evidence, that *Hannah Aske* (who was then dead) cohabited with him, for several years, as man and wife, but that they never were married, that the said *H. Aske* was during the time they cohabited together delivered of three children, one of which, the pauper, was born in the parish of old *Swinsford*, that they were all three reputed and baptized as his legitimate children, and that the marriage was never questioned in the lifetime of the said *H. Aske*. The sessions held this to be insufficient to support the order of the two Justices. *Lord Hardwicke*: The first order goes a little too far, in calling the pauper "a bastard the son of *J. Haighington*," but that is only an impropriety, and the order is sufficiently good for the purpose of removing him to the parish where he was born. It is an apparent fact that *J. Haighington* was never married to *H. Aske*; why then was he an incompetent witness? It was an objection to an order of bastardy, two terms ago (*R. v. Willey*) that it was founded upon the evidence of a married woman, which ought not to be admitted to discharge her husband, but this man does not swear to discharge himself, for whether he be the legitimate or only the natural father of the child, he is equally bound to maintain it. Order of sessions quashed.

Sessions must
make a direct
and final judg-
ment.

188. *R. v. Reading, M.* 8 G. 2. *Cases Temp.* *Hardwicke* Chief Justice 79. Motion to quash an order of two Justices, and two orders of sessions made thereon, whereby the defendant was adjudged father of a bastard child. The first order of sessions was a special order setting forth the particular circumstances of the case, and charging the defendant upon the oath of a *feme covert* with getting a bastard child upon her. This order adjourned the matter to take the advice of the Judges of assize, but they declined giving their opinion in it: And the second order resumes the affair, and adjudges the defendant to be the father of the child. There were other witnesses, which said that the husband was resident about seven miles from the wife's habitation. *Hardwicke* Chief Justice: There are two questions, one upon the form of the order, the other upon the merits of the case. The objection to the form is, that the first order of sessions makes no determination, and that there appears no adjournment upon the first by which the sessions could resume the consideration of the cause. Where an appeal is lodged in the sessions, it is necessary that they make a direct and final judgment, and they cannot refer it to the Judges of assize for their judgment,

Salk. 480. *Ex R. v. Willey* this term; and had the matter rested upon the first order it had undoubtedly been bad, but then it cannot be doubted but they may continue over the determination on the appeal by a proper adjournment, either to take the opinion of the Judges or for any other reason. The matter therefore rests upon this, that there is upon the first order a reference to the Judges of assize for their advice, and no formal adjournment after it. It does not appear to have been ever determined, that it is necessary for the Justices in their quarter sessions in the execution of any jurisdiction given by statute to make formal and regular continuances, as the courts above do. It must be agreed indeed that upon indictments where they proceed in a court of record at common law, they must make regular continuances. But it seems that upon orders no such formal adjournment is necessary; and the matter sufficiently imports that there was in fact an adjournment by referring it to the Judges for their advice when they should come the circuit. The question then will arise, whether the last orders being adjudged bad upon the merits of the first order, can be abstracted from them and made good. It has always been a rule in this case, that if a general order of two Justices is good upon the face of it, and there is an appeal from it to the sessions, and they make an order specially, stating the case as it appeared in evidence before them, the special case in this last order will be taken by this court to be the foundation upon which the first order by two Justices were made, and if the evidence set out upon the last order is not sufficient to maintain their judgment thereon, the court will quash the first as well as the last order. It has been said, that if the orders of sessions are bad upon any account, the court will not take notice of any thing appearing therein; this will hold in pleading, but not in orders; for in orders of settlement where on appeal the sessions state the case specially, and conclude with quashing the order of the two Justices; this court will sometimes make use of the fact appearing upon the last order to quash it, and consequently to affirm the order of the two Justices. As to the merits, the wife is not a competent evidence in point of law in this case, that is to prove the whole fact; though it seems that she may be a competent witness to prove the criminal conversation between the defendant and herself, by reason of the nature of the fact which is usually carried on with such secrecy, that it will admit of no other evidence. From the necessity of the thing then only, she may be a good witness to prove the fact of the defendant's

Sessions proceeding on indictments must make formal and regular continuances, but it is not necessary with regard to orders.

If there is a general order of Justices and a special of sessions, the court will intend special matter in the order of sessions, to be the foundation upon which the Justices made the first order.

The wife is not a sufficient sole evidence to bastardise her issue.

defendant's conversation with her. But the present case has gone farther; for the wife is the only evidence to prove the absence and non-access of the husband; whereas this might be made to appear by other witnesses, and therefore the wife shall not be admitted to prove it, since there is no necessity that can justify her being an evidence in this case. In the case of *Penderil*, 2 Str. 925. There was the strongest evidence imaginable to prove the non-access of the husband; it was made to appear by several of the husband's relations, who watched him for that purpose, that he was in *Staffordshire* all the time that his wife was with child, and that she resided in *London* the whole time. *Ld. Ch. J. Raymond* allowed the defendant to prove the mother a woman of ill fame, but would not allow the mother's declaration that the child was a bastard to be given in evidence till she had been called, and denied them upon the cross examination. The wife therefore is not to be admitted as evidence to prove that the husband had no access to her; this evidence of other witnesses that he lived seven miles off, shews an apparent possibility of access. It will be of very dangerous consequence to lay it down as a general rule that a wife shall be sufficient sole evidence to bastardise her child, and to discharge her husband of the burden of his maintenance. (See pl. 148.) But the opinion the court is of at present will not be a precedent in any other case, wherein there are other sufficient witnesses as to the want of access; but the foundation now gone upon is the wife's being the sole witness. *Page J.* By statute, in an action against the hundred, the person robbed is admitted as evidence, to prove that he was robbed, of what sum, and of what place, but of all other things which may possibly be proved as well by other persons he is no evidence in law. *Probyn J.* In cases of violence committed by the husband against the wife, she herself is admitted as evidence, as in the case of *Lord Audley*, and in the cases of exhibiting articles of the peace, since the violence may be done at a time when no one else can prove or know it. *Lee Justice*: in the case *Salk. 122.* where a child born in lawful wedlock was proved to be a bastard, no such exception was taken as in the present case, but the defendant merely insisted upon the old notion of the husband's being within the four seas. On the statute 3 H. 7. c. 2. In the case of *Ramsay*, on an indictment for forcibly taking away a woman and marrying her, the wife was admitted an evidence because none

all except the defendant were present; this woman may therefore be admitted to prove what it cannot be presumed there are other witnesses to prove; but then it must be admitted no farther than necessity warrants; and in all other cases, the rule of law is to be adhered to. But I doubt as to the order of sessions being good in form, the words of the 18 Eliz. seem to confine that to the next sessions; and if they then and there do nothing, then the act of the two Justices is to stand. The court ordered it to stand over as to this point, of which Mr. Justice *Lee* doubted; but that all the rest were fully determined. That it having been determined that in cases of bastardy, where no order has been made by two Justices, but where the sessions have gone upon it originally, pursuant to 3 Car. c. 4. and make an order that the defendant is not chargeable, and the same matter has been afterwards taken up at the next sessions, that the last order might be quashed, because the sessions were before *functi officio*; it might be worthy of consideration on the next argument, whether the two Justices and the sessions having both made orders are not *functi officio*, and consequently whether the court can bind over the defendant to appear before them again. *Stands over.*

189. *Barkley v. Sir Woolston Dixie, Baronet, E. 9 G. 2.* *Cases temp. Hardwick* Ch. J. In an action for a malicious prosecution, the defendant was willing that the plaintiff's wife should be examined. Lord *Hardwick*: The reason why the law will not suffer a wife to be a witness for or against her husband, is to preserve the peace of families; and therefore I shall never encourage such a consent; and she was not examined. Plaintiff's wife not admitted to give evidence though the defendant was desirous to consent.

190. *May v. May, E. 10 G. 2. 2 Str. 1073.* In a question on the plaintiff's legitimacy, it was resolved that there can be only one register in one parish, that the day-book in which entries may be originally made, cannot be read to contradict the register. Can be only one register in a parish.

191. *R. v. Badell, T. 10 G. 2. Str. 1076.* An order of Justices was made upon *Moor* as the putative father of two bastards born of the body of *Elizabeth* the wife of *Richard Sharplefs*, in which it was stated that for seven years before the husband had no access to her, she having never seen nor heard of him in all that time, and not knowing whether he was alive or dead; which the Justices adjudge to be true, and that *Moor* is the father of them. Upon the order of sessions the case is stand with some variation, that in 1724 she was married to *Sharplefs* then Improper evidence.

then a soldier in *Mullin's* troop, in a habit by a person not in the habit of a clergyman; that there had been no access for seven years, but it appearing by a certificate from the Commissary General's office dated 7th April 1737, and from the evidence of *Simon Clarkson*, that one *Richard Sharplefs*, who he was told was formerly in *Mullin's* troop, was mustered as a private gentleman in the third troop of horse guards from June 1733 to February 1736, though *Clarkson* said he could not take upon him to swear that it was the same *Richard Sharplefs* pretended to be married as aforesaid: upon this supposition of the husband's being alive the sessions were of opinion the children were not bastards, and reversed the order of the two Justices. Upon debate (in the absence of the Chief Justice) the order of sessions was quashed and the order of two Justices confirmed, for it being fixed on both sides that there was no access, it was immaterial whether the husband was alive or not: but if it was material here is no evidence to prove it, the defendant not being sworn to, or if it was, yet the evidence of his being alive was improper to have been received, and even the marriage itself doubtful.

192. *R. v. Woodchester, M. 16 G. 2. 28 Str. 1171.*

Order unappealed from is conclusive, and no evidence shall be heard upon a second order to legitimate the children.

An order in 1731 to *Thomas A.* and his wife from *M. to Woodchester*, was not appealed from. They afterwards returned to *N.* and had there three children, who were now sent from *N.* to (by order of Justices) *Woodchester* with their father. Upon appeal, it was offered to be given in evidence that *A.* had a former wife, and consequently the children born at *N.* were bastards and settled there. The sessions would not permit *Woodchester* to go into this evidence. *Per Cur.* Both orders must be confirmed. The marriage being established by the first order, which was acquiesced in, the settlement of the children follows of course, and can no way be impeached but by entering into the merits of the first order. Nothing is more established than that an order unappealed from is conclusive. See *New Windsor* and *White Waltham* and *Bull* 22402 *Earth* 516. 1 *Bur. S. C.* 192. 2 *Bur. S. C.* 561.

A married woman swore that her husband was in gaol, and that she had no access, not sufficient alone.

193. *R. v. Rast, M. 26 G. 2. Wilf. 341.* An order was made that the defendant should maintain a bastard child, upon the oath of a married woman alone, who swore that her husband was in gaol long before she was got with the bastard child and ever since; and that she had no access to him, and that *Rast* got the bastard. *Per Cur.*

Cur. It was said by Lord Hardwicke in *R. v. Reading*, M. 8 G. 2. that although a wife may be admitted to prove the fact of adultery, that she shall not be admitted to prove that her husband had no access, because that may be proved by other persons, and an order of bastardy therefore could not be made on her oath alone. The case of the parish of *Bedall* differs from this, for there were witnesses to prove the husband had no access.

Order of Maintenance. R. v. Gravesend.

194. *Anonymous*, H. 4 Ch. 2. Siles 368. *Per Cur.* ^{Must be in the parish where the child is born.} It must appear by the order for maintaining a bastard child, that it was born in that parish, to which the money was ordered to be paid. Same resolution *R. v. Childers*, E. 3 G. 2. MSS.

195. *Richards and Salmon against Hodges*, T. 2 Car. 2. 2 Saund. 83. *Richards and Salmon*, being churchwardens, brought an action against *Hodges*, on his bond in the usual form to indemnify the parish in the case of a bastard child. The defendant pleaded *Non damnificatus* generally: The plaintiffs replied that neither the defendant, nor any other for the space of one month after making of the bond, did provide any maintenance for the child; by reason whereof, the parishioners, to prevent the said child's perishing by hunger and cold, were forced for all the time aforesaid to pay, and have paid four shillings for the maintenance and nourishment of the said child. To which the defendant rejoined, that he would have nourished the said child at his proper costs and charges for all the time aforesaid, and offered so to do, as well to the plaintiffs, as to other the parishioners; but they refused to permit him, and against the will of the defendant put the said child to nurse, and paid the said four shillings: Upon which rejoinder, the plaintiffs demurred in law. And by the court, the rejoinder is not good; because it is a departure from the first plea in bar, for the defendant in his plea says, that the parishioners were not damnified, and when the plaintiffs by their replication shew how they were damnified, there the defendant cannot rejoin, that this damnification was of their own wrong, as here he hath done; but he ought to have pleaded that at first in his plea in the bar. And though it was urged for the defendant, that this was no damnification at all, because it was the voluntary act of the parish, to put the child to nurse when the defendant himself offered to maintain it, and that they ought

ought not to take the advantage of their own wrong; yet it was not allowed. For the court held clearly, that the rejoinder was a departure; and for that reason it was adjudged for the plaintiffs.

Order to pay the midwife.

Seven shillings a week excessive.

Too little.

Till no longer chargeable.

Order by five Justices none of the Quorum for the relief of a town.

Till the child attains the age of 14 bad.

To pay to the overseers, good.

196 *R. v. Sherman*, E. 24 Ch. 2. Vent. 210. Order of Justices quashed, because the father was directed to pay four shillings to the midwife, whereas it did not appear that the parish had procured her, or were at any charge with respect to her, and because the putative father was ordered to pay seven shillings a week until the child should be able to get its living by working. But the court held seven shillings a week excessive, and *Twisden* Justice observed, that it should have been for no longer time than the child should be chargeable to the parish.

197. An order that the father should pay two-pence a-week is too little and unreasonable. *Sid.* 363.

198. *M.* 3 J. 2. Comb. 69. Order makes provision for the maintenance of a bastard child, (till it shall be no longer chargeable, &c.) whereas by the statute it should be till the child shall be able to get its own living, but the order was confirmed.

199. *Hatton's Case*, H. 8 W. 3. 2 Salk. 477. To an order made by five Justices, to maintain a bastard child it was objected, that the complaint is not said to have been made by any parish, or officers of any parish, but of a town, which may include many parishes; and that instead of five Justices, the order should have been made by the two next; and that it does not appear that either of those was of the *quorum*, the two first exceptions were over-ruled, but the order was quashed upon the last. 1 *Mod. Cas.* 180.

200. *R. v. Barebaker*, E. 9 W. 3. 2 Salk. 478. Order to pay three shillings per week, for the maintenance of his bastard child till it attains the age of fourteen years, was held bad, for the Justices have no authority but to indemnify the parish, by obliging him to maintain the child as long as it shall be chargeable to the parish. 1 Vent. 210. 1 *Mod.* 20. Comb. 320. 1 *Sid.* 222.

201. *R. v. Weston*, T. 4 Ann. Salk. 122. Defendant being adjudged the father of a bastard was ordered to pay so much weekly to the overseers of the poor, and the court refused to quash the order upon that exception, because, as before the institution of overseers, the Justices might order the money to be paid to two or three of the inhabitants;

bitants, so now they may to the overseers; the order was quashed, because it was said, We the said two Justices doth adjudge. *N. B.* It was ruled in this case, that Justices of the Peace may order the payment upon a particular day weekly, even if the first week from making the order should not be complete on that day. *Ld. Raym.*

1498. *202. Case of the parish of Cuddington, E. 9 Ann.* To pay till 3
Order to keep the child till he could gain his livelihood, years old.

ill, for the uncertainty. *Poors Sett. 62.* And in *Smith's Case, Poors Sett. 64.* To an order to pay one shilling a week till the child is eight years old, it was objected that it ought to be as long as the child is chargeable for possibly he may gain a settlement, or a person may give him an estate, or the father may take him. *Per Cur.* A remote possibility; as to the father's taking him, he ought to have done it at first; and by suffering the orders to be made it shall be deemed a refusal in law. Besides he shall not be then suffered, he may sell him, or make away with him, as too often happens.

203. R. v. Odam, M. 12 Ann. Salk. 123. Order in bastardy for the defendant to pay nine pounds in gross immediately upon sight of the order, and after that so much weekly, held good; for by the statute the Justices are to make order for relief of the parish, and keeping of the child, by payment of money weekly, or other sustentation, and this might be only indemnifying the parish for money laid out before the reputed father could be found. *1 Vent. 121.*

204. R. v. Street, M. 1 G. 2. 2 Str. 788. An order of bastardy was made to pay so much weekly, till the child was nine years old, if it should so long live, and allowed to be a good order, because it cannot be intended able to provide for itself sooner.

205. R. v. Howlett, E. 13 G. 2. MSS. Order Adjudging *H.* the father of a bastard child, and ordering him to maintain it for the relief of the governor and guardian for the poor of *Colchester*, and not saying for the relief of the poor, was quashed.

206. R. v. Cornfort. MSS. 2. The defendant married a natural daughter of one *Bohun*, who was but 15 years old, and the question was, Whether, as she was his natural daughter, this case was within the 4 & 5 P. & M. c. 18. it appeared he was a distant relation, went to her father's house upon a visit, and was entertained there, and made his address to the

the lady, but the encouragement in the affair first arose from her: an information was moved for against the husband and several other persons concerned in this transaction. *Ch. J.* The foundation of this application, I take to have been a contrivance for the defendant to do an unlawful act, viz. to take away this young lady, who appears to be under 16, out of the possession of a person having by lawful means the government and education of her, without his consent; which by the statute is declared to be unlawful. If there appears a reasonable satisfaction that they have done so, it will subject them to an information, and it is not necessary in this case for the court to give any judgement upon the fact, whether legitimate or not; neither is that the point in the act, but the taking her from the possession of a person having by lawful means the government of her, and therefore whether this taking was by device of his own or the schemes of the lady will make no difference. As this is for a conspiracy and confederacy, if there is a reasonable satisfaction that the other defendants had any knowledge of the affair, that will be sufficient to join them in the information, I am therefore for granting the information. *Chapple. J.* If it had rested singly on the 2d § of the act, I should have had some difficulty, but it is plain from the 2d & 3d sect. together that they intended to take in different cases; the second section is, that no person generally shall take away nor from the possession of the father or person appointed by the father, by his will or otherwise, to have the care of her; but the 3d sect. is that no person above 14 shall take away a person from the possession of the father or mother, or other person having by lawful means the care of her. So that these causes are quite distinct; and whether she be legitimate or not makes no difference on the 3d. sect. *Wright. J.* The 3d sect. takes in this case, and whether legitimate or not makes no difference; the putative father of a natural child has a natural right to the care and education of it; and it is an act of humanity in him to do so; he has therefore the care of it by lawful means, and the taking her from his possession is an offence within the act. Information was granted.

207. *Newland against Osman, T. 27 G. 2. MSS.* Debt upon a bond with condition to indemnify, and save harmless the parish from a bastard child. Plea, that the defendant had maintained the same child to a certain day, that is to say, to the 27th of October last; and that then he

The putative father of a bastard child may take him from the parish, and maintain him himself.

He offered to take the said child to maintain, which they refused; and that if the churchwardens, or any of them have been summoned, it is of their own wrong. Repliation; that for three weeks from and after the said 27th day of October, the defendant did not provide nourishment for the child, but failed; and by reason thereof the plaintiffs, after the three weeks, expended three shillings for the maintenance of the child, and so were summoned: demurrer, and joinder in demurrer. The question of law is, whether a putative father may take a bastard child into his own custody to maintain it, or whether the parish shall have the care of it. And the case in 2 *Saund.* 83, was mentioned, wherein the court held this to be a good plea, 1 *Pen.* 48. that the father may maintain the child himself, 1 *Pen.* 210. that the justices can only make an order to maintain so long as the child shall be chargeable. By *Lord Chief Justice*: The right way is to make the order so long as the child shall be chargeable: It is not to be limited to any certain time; and the reason given in all these cases is, that the father or mother may take it before the time: The intention of the statute of *Elizabeth* was to have a provision for the bastard, and at the same time to indemnify parishes. And the law could never think of taking the care and education of children from their parents: Nor could this enter into the mind of any judge. Nourishing and maintaining certainly answers education: It hath been objected, that the excuse is collateral, I am not of that opinion, for all the inhabitants are parties, and the overseers, are but trustees for them. It seems a sufficient excuse and there is no answer on the part of the plaintiff to it: No objection has even been thought of to pleas of this kind. *Wright Justice*: In the case in *Saunders* it seems to have been admitted, that if this had been pleaded in the first instance it would have been good. I never did hear before, that the care of the child devolved upon the parish where there was any person to take care of it. They are obliged to maintain the child, where it is in danger of starving. This court has constantly held, that the father has a right to take away, by quashing the orders made in the manner above mentioned. This is not a collateral excuse, but such a one as will save the penalty; and I cannot see that the parish has any sort of right or interest in the child. *Denison J.* The material objection taken to this plea is, whether or no the putative father

But see Mr. J. Foster's observation at the lower part of the next page.

See Pl. 195.

of a bastard child can, by the law of England, take his bastard child from the parish: I never did hear this doubted before; and I think, that the notion that he cannot, is not to be countenanced nor encouraged. The law does not suppose, that a man will not maintain his own child: It is said, the next heir is not to be trusted with the guardianship; I am sorry that was ever introduced into the law of England. It is an injurious notion of the people of England: It may rather be supposed, that the parish officers will be cruel to the child than the father. All the cases admit tacitly, that the father hath such power; and some of them say so expressly: And I am very well satisfied, that the law is so. Inhabitants, churchwardens, overseers are all the same, and every part and condition is answered: I have known this plea very often pleaded: And that case is *Saunders* is the rule. *Easter* J. I am not so clear in these points, I think the care of educating bastard children is not to be considered as a burden to the parish, but as a trust; and that it should not be so easy for fathers to take them out of their care and custody: The statute is express, that the Justices shall order the father to contribute to the parish for the maintenance of the child: Though it is not to be supposed, That the fathers will destroy their bastard children; yet they may look upon them as a burden and a shame, and therefore either neglect them, or put them into improper hands. The resolutions and orders of Justices of the Peace have been grounded upon this; not for requiring security till the child come to a certain age; but because the order intended the age too far: Therefore I am not so clear. The case in *Saunders* was only his own opinion. Judgment for the defendant; unless desired to be argued again this term.

Motion for an information for taking away a bastard.

208. *R. v. Felton and Wenman*, E. 31 G. 2, MSS. 2. On motion for an information against defendants for taking away a bastard child from its mother, and delivering it to the father, a man of fortune. Ld. Mansfield said: Neither the putative father nor mother has the legal right of guardianship, and if the putative father, having an order of bastardy made on him to contribute to the maintenance of the child, has a mind to take the child and provide for it, the parish cannot insist on his paying towards the maintenance, while in his custody; and that he thought in this case where the Justices had ordered the child to be delivered to the mother, he (the Justice) had done wrong: the

the father being in good circumstances, and the mother poor, and that the circumstances of the parents should direct in these cases.

Appeal.

209. An appeal from an order of bastardy must be to the next sessions after the notice of the first order. *Salk.* 480.

210. It was resolved in 1 *Sid.* 325. that by the words next quarter sessions (18 *Eliz.* c. 3.) it must be intended that the order made by two Justices must be confirmed or discharged at the next quarter sessions, for that part of the county where it was made, and not at the sessions in the county, for it would be mischievous in many counties, where there are several sessions in distinct parts of county.

Appeal must be to the division wherein order was made.
N.B. The words of the statute are general sessions. See pl. 15.

211 *R. v. Shaw, T. 10 W. 3. 2 Salk.* 482. An order was made by two Justices adjudging *Shaw* the reputed father of a bastard, from which he appealed to the next quarter sessions of the peace for notice, where the order was discharged. The order of sessions was quashed, because by the statute 18 *Eliz.* the appeal must be to the next general sessions after notice, and there might have been a general sessions before the general quarter sessions, as in *London* and *Middlesex*, where there are general sessions in a year besides the general quarter sessions.

Appeal must be to the next general sessions after notice.

Jurisdiction of the Sessions.

212. The sessions with regard to the fathers of bastards, must proceed upon the recognizance on the 18th. of *Eliz.* but if they proceed on the 3 *Charles* the first, they may commit as the two Justices might have done, that is, unless the party put in security to perform the order, or to appear at the next sessions. *Salk.* 122.

Note the difference between the 18 *Eliz.* and 3 *Car.*

213. *Slater's Case, E. 19 Ca. Coke Char.* 471. It was resolved by the whole court, that before the statute 3 *Ca. c. 4.* The sessions had not authority to meddle in the case of bastardy till the two next Justices according to the statute 18 *Eliz.* had made an order therein, and that then and not before, the Justices in sessions might make a new order, &c. otherwise not. Secondly, that by the 3 *Ca. c. 4.* the sessions have authority originally to make an order in the case of bastardy; and therefore the

Sessions have original authority.
After the sessions have made an order two Justices cannot.

the first order made by the sessions in this case was good and legal, and the order made by the two next Justices void, and could not alter or revoke the order (of sessions) which was first made by good authority. Thirdly. that the Justices had not authority to commit the woman to prison for life for the first offence. See pl. 129.

No appeal lies from an order made on appeal at quarter sessions, as a subsequent sessions.

214. *Pridgen's Case, Bullstrode, 255.* An order was made upon him by two Justices of Peace to make a weekly allowance for maintaining a bastard child of which they adjudged him the reputed father which order was quashed at the sessions; and another was made there upon J. S. adjudging him to be the reputed father &c. Afterwards at another sessions, the last order was discharged, and by the same order of sessions *Pridgen* was found again to be the reputed father of the bastard child, and ordered to make an allowance for its maintenance. These orders being removed by *Cartiorari* into the K. B. it was resolved by the whole court, that the second order made upon *Pridgen* at the quarter sessions was clearly illegal; that no appeal lay from the first order of the sessions to the sessions afterwards; but that the first order of sessions was final.

It must appear on the order, that the session was the first after notice of the order of Justices. See pl. 221.

215. *R. v. Brown T. 9 W. 3. 2 Salt. 480.* Order was made on the 2d May 1696, adjudging *Brown* to be the father of a bastard child, which at the *Michaelmas* sessions following was discharged. The order of sessions was quashed, because it did not appear thereon, that *Michaelmas* sessions was the first sessions after notice given to the reputed father of his being so adjudged: For though the 18 *Eliz.* appoints the appeal not to be to the first sessions after the order is made, but to the first after notice given of the order; yet by the statute *Henry 5.* there might be a sessions intervening, as in this case between the order of the justices, and the order of sessions, and it must appear on the order that this was the first sessions after notice of the order. *Comb. 448.*

Constable suffers the putative father to escape.

216. *R. v. Ridge, M. 11 Ann. MSS. A.* I swore that *B.* got her with child, and a warrant was granted to the defendant *Ridge*, then being constable to apprehend *B.* and he let him escape. The Justices made an order upon *Ridge* to pay three pounds towards the expences the parish has been at, and one shilling a-week towards the maintenance of the child, and the mother to pay sixpence a-week. Quashed as to the constable, the Justices not having such authority, but confirmed as to the mother.

217. *R. v. Tiriam, M. 13 G. MSS.* *Lr* moved to quash an order of bastardy by two Justices to charge defendant with keeping a bastard begotten on a feme covert on the husband's absence, on the evidence of a certificate from a captain in the army that the husband was at that time in Ireland, and the concurring evidence of the woman's confession that defendant was the father. The case was thus: Defendant appealed from the order of two Justices to the sessions who quashed the first order. The same two Justices made a second order on the grounds of the first. Insisted the order was void, for according to the case in 1 *Vent.* 89. If an order of two Justices be revoked by appeal at sessions, the person is absolutely discharged, and the Justices have no power to make a new order. It was answered, that if sessions discharged the order for form, a new order might be made. *Sed per Cur.* Nothing of that kind shall be intended. The order of sessions recites that this order was made on full hearing, and therefore the merits must come before them, and the discharge by the sessions on the appeal is conclusive, and the defendant being in court was discharged.

Order of sessions recites that it was made on full hearing, the merits therefore must have come before them, and their discharge is conclusive.

Quashing of Orders.

218. *R. v. Matthews, H. 8 W. 3. 2 Salk. 475.* Two exceptions were taken to an order of bastardy, that it is not said that the child is likely to become chargeable, and that the defendant was ordered to pay eighteen pence a week indefinitely without limiting a certain time. *Shower* answered, that no order relating to a bastard child can be quashed, unless the reputed father is present in court, which was allowed, but the court granted a rule to shew cause, and quashed the order upon the second exception, but over-ruled the first, it being evident that every bastard child is likely to become chargeable.

Order is bastardy not to be quashed, unless, &c.

Punishment of the Mother.

219. *Bulstrode 348.* The mother of a bastard child shall not be punished upon the statute of the 7 *Jac.* c. 24: for her second offence, unless she had been before questioned, and punished for her first offence. But she might have been punished for her first offence either by the statute 18 *Eliz.* or 7 *Jac.* but is not to be punished by

Bastards.

by the 7 Jac. as for her second offence, unless she had been before punished for her first offence, but this second offence shall be now taken and deemed as her first offence, and so is to be punished for the same according to law. See pl. 213.

Settlement of Bastards.

A servant dwelling at T. being big with child was removed by contrivance into another parish, and there delivered of a bastard.

220. *Villa de Tewksbury v. Villam de Twining.* 8 Ch. B. 349. Before the Judge of assize this case came in question, upon the statute of 18 Eliz. c. 3. for provision for bastard children. A servant maid dwelling in Twining was there got with child, and she being near the time of her delivery, by practice, she was conveyed out of the Parish of Twining into an outhouse or hovel of one Edward Baugh's an inhabitant of Twining, the which hovel was near Twining, but within the parish of Tewksbury being the uttermost confines of it, and there the child was born: afterwards the parish of Twining gave relief unto her, and the minister of Twining did christen the child, and afterward when she was able to remove, they of the parish of Twining did receive her and her child and gave relief to her for two years; afterwards the mother being sick, they of Twining did send her away with the child to Longden in the county of Worcester, where the mother died; then they of Longden sent the child to Twining, and they of Twining sent the child, being under the age of three years, unto the vill of Tewksbury within which parish the child was born, and they sent the child again unto Twining. The question upon all this moved to the judges was, Whether of these two parishes (S.) Twining or Tewksbury were to keep the child and provide for it? Sir William Jones J. before whom this was moved legally and regularly; he held that child is to be kept by the parish where the same is born; but if any such practice be proved, then this rule doth fail, and then the child is to be kept and provided for where she did dwell, and where she was got with child, and which had used this practice to have the child born in another parish, and so he did order the same in this case (the practice being very apparent) that the child was to be kept and provided for by the parish of Twining, where she with her child were before, and he did likewise refer the examination of this practice to the Justices of the Peace at their quarter sessions, and if upon that examination they did find it to be so, and so do certify the practice

rice to be as is now informed; then by the law the child is to be kept by the parish of *Twining*, and by them to be provided for; and accordingly it was so ordered.

221. *Guildford and Killington, T. 11 W. 3. Holt 509.* Motion to quash an order of Justices to remove a woman and her bastard child from *A.* to *B.* whereas it appeared in the order that the child was born at *C.* *Per Holt Ch.* J. The bastard must be kept where it was born. 2. *Salk.* 485. See *pl.* 189.

Bastard must be kept where it is born.

222. *Wood's Case, M. 10 W. 3. Salk. 121.* Bastard born in *B.* pending an order of removal of the mother from *A.* (which order is afterwards reversed) is settled in *A.* for the mother's right of settling upon *B.* is voided *ab initio.* 2. *Salk.* 474, 532. *Carth.* 397. *Peers Sett.* 65.

Bastard born under an order of removal.

223. *Comb. 380.* If a woman with child is sent to the house of correction and there delivered, the child shall not gain a settlement in the parish where the house of correction is; but shall be sent to the parish from whence the mother was sent to the house of correction.

Born in the house of correction.

224. *R. v. Spittlefields, B. 12 W. 3. Ld. Raym. 367.* An infant born in the parish of *St. Andrews, Holbourn*, was nursed in *Spittlefields*, the father died, and the mother ran away; they had neither of them a settlement in *St. Andrew's*, but were only lodgers. Two Justices remove the child from *Spittlefields* to the parish of *St. Andrew's*, as being the place of its birth. Upon appeal to the sessions the order was quashed, the Justices being of opinion, that bastards did not gain a settlement by birth. The order of sessions was quashed, because a child ought to be maintained where it is born, unless it gains another settlement.

Bastard children of lodgers are settled where born.

225. *R. v. Budworth, H. 5 Ann. Salk. 123.* Upon an order made in the year 1675 upon that parish, for the maintenance of a bastard born in the township of *Neither Dumbley* within the parish, which order was now removed by *Cartiorari*, It was held: That an order made upon the overseers of a parish, by two Justices, for the raising a sum for the maintenance of a poor person or bastard, does not determine the settlement of the person in the parish; for the right of settlement is not contested but presumed. And that the clause of the 13 & 14 *Ca. 2. c. 12* which provides that distinct townships of large parishes in the Northern counties shall distinctly provide for their poor, does not respect bastards who are provided for by other statute, but if a bastard grow up, and by accident become impotent, he may be relieved as a poor person within that statute.

Order made upon overseers for the maintenance of a child, does not determine the settlement.

The clause in the statute 13 Cha. 2. does not relate to bastards.

Bastard born in
transitu by
collusion or be-
fore order can
be served.

226. *Jane Gray's Case*, B. 9 Ann. *Pears Sett.* 68. Resolutions of the court concerning the birth of a bastard. If the officers are carrying a person by virtue of an order of removal, and she is delivered on the road *in transitu*, the bastard shall go with the mother, where she is going by virtue of the order. 2. If the woman had come into the parish by privity and collusion of the adverse officers, the bastard gains no settlement. 3. If there be an order made; and before that order can be served the bastard is born, it gains no settlement, but shall go with its mother.

Bastards born under Certificate. See page 127, &c.

Persons certi-
ficated as man
and wife.
See *Rex v. Head-
corn*.

227. *Case of New Windsor and White Waltham*, T. 5 G. Str. 186. The parish of *White Waltham* gave a certificate to a man and a woman supposed to be his wife, with which they went into the parish of *Windsor*; and had there six children: Afterwards the woman swore that they were never married, and the question was, Whether the children as bastards should be settled in the parish where they were born, or in the parish which granted the certificate? And the court of K. B. held it a matter of no doubt, but that the bastard of a certificate person is settled in the place of its birth, for he is not such an issue as will follow the settlement of his father or mother; neither is such bastard his or her child within the intention of the statute, so as to be sent back with the parent; that the certificate is conclusive to *White Waltham*; and that they are not to be admitted to dispute the validity of the marriage. *Fort.* 304.

Bastard of a cer-
tificate person is
settled where
born.

228. *R. v. Helton*, T. 16 G. 2. *Burr.* S. C. 189. A girl of a bad character was removed from *Lydlinch* to *Helton*, by order of Justices, and three days afterwards the parish of *Helton* sent her back to *Lydlinch*, with a certificate acknowledging her to be their parishioner. She lived with her mother in *Lydlinch*, and was a little more than a year afterwards there delivered of a bastard child, which is the pauper now removed from *Lydlinch*, to *Helton*. Ch. J. *Lee*: The certificate is stated to have been duly and legally made, executed and delivered. The form must be taken to have been good; nor do I apprehend that we can in any degree consider this as a fraud. Every thing which happens under an illegal removal, shall

shall be chargeable upon the parish from whence the illegal removal was made; the birth of the child in the other parish being occasioned by the wrong removal of the mother to that parish. But the present is quite a different case. It depends upon the question, whom the Justices have power to remove as children. But bastard children are no body's children. Therefore I think this act (8 & 9 W. 3.) cannot be construed into such a meaning, and that this removal cannot be maintained, which sends the bastard away from the place where born, under the notion of the child of a certificate person. The other judges concurred, that the word family, and the word children in this act must mean legitimate children, so that bastards are not even within the words of that act. *Order quashed. 2 Str. 1168.*

229. *R. v. Wyke, T. 19 & 20 G. 2. Burr. S. C. 264.* Certificate to Sarah Cotton, the mother of John Cotton, came on the 10th of March 1719, from Shalfs to Hipperholm by certificate, being then pregnant with a bastard child (the said John Cotton) and was delivered of him in the April following. The sessions were of opinion that the said J. C. by reason of the said certificate did not gain a settlement in Hipperholm, where he was born a bastard child as aforesaid. The certificate itself was returned up, and undertakes that Shalfs shall provide for her and her child, whenever they should become chargeable. It was alleged in support of the motion to quash the order of sessions, that a bastard of a certificate woman is settled where born, see pl. 228. and that fraud shall not be presumed, unless stated. *Ld. Ch. J. Lee* and *Mr. J. Wigham* agreed, that they must take the child referred to by the certificate, to be a legitimate child then in being. *Mr. J. Foster* observed, that it did not appear that the parish which gave the certificate knew that the woman was then with child. The counsel for Hipperholm proposed that it should go back to the sessions to be more fully stated, but the court agreed that could not be done without consent of the other side. Order of sessions quashed. *Mr. Burn* in a note upon this case seems to think that, if the certificate had undertaken to provide for the child she was pregnant with, it would not have been binding upon the parish; that point came very lately before the court of *King's Bench*, and was determined against the certifying parish, as appears by the following case.

230. *R. v. Ipsley, M. 10 G. 3.* A woman was pregnant with a bastard child in the parish of Ipsley. The officers provide for A. and the child she was pregnant with.

officers of which were about to remove her, but the officers of *Studley* desired them to let the woman continue in their parish, and gave them a certificate acknowledging the settlement of the mother, and the child she was then pregnant with to be in their parish. The woman was delivered in that parish to which she was certificated. On appeal the Justices of sessions were of opinion that the child being a bastard must be settled where born, and made their order accordingly. On the rule to shew cause, Mr. Solicitor General and Mr. Daves in support of the order of sessions insisted, that a bastard of a certificate person must be settled where born, and cited a case in *Strange* 1168, to prove it, see *pl.* 229. that the child was a nonentity, not a citizen of the world, and it would be therefore absurd to say, it was an inhabitant in any parish. That if the word family was omitted in the certificate act, the act would not comprehend children, that however that word might be construed to take in children, yet bastards being part of no family, nobody's children, they cannot be included in that word. That it is a case omitted by that act, and cannot be construed a legal certificate, but is a mere contract at common law, for which the parties might take what remedies the law would allow them in another shape. Lord Mansfield, without hearing counsel on the other side, said that an infant *in ventre sa mere* is an entity to many purposes; he may take by descent, and be vouched. That the certificate includes the inhabitant appearing, and the inhabitants not appearing, the mother and the child in the mother's belly, who is an inhabitant to this purpose. By the whole court the order must be quashed.

CHAP. VII.

Certificates.

Form, *pl.* 231. Effect, *pl.* 236. Determination, *pl.* 244. And by what Means a Settlement can be gained under a Certificate, *pl.* 249. See the 13 & 14 *Car.* 2. *c.* 12. *f.* 1.—8 & 9 *W.* 3. *c.* 30. *f.* 1.—9 & 10 *W.* 3. *c.* 11.—12 *Ann.* *Stat.* 1. *c.* 18. *f.* 2. And 3 *G.* 2. *c.* 29. *f.* 8.

231. *R. v. Boston, E. 4 G. Str.* 94. Two Justices attested as witnesses * a certificate signed by the churchwardens of *Boston*. And the court held that where the Justices take upon them to act both as witnesses and Justices it is sufficient, for that it is not necessary that there should be four distinct persons, two as witnesses, and two as Justices, to allow the certificate; but here it only appeared that they subscribed as witnesses, for there are no words of allowance. If this should be held good, the Justices may be drawn in to sign as witnesses, when perhaps they do not so much as know what the instrument is, and never imagined what they did would pass for an allowance. Certificate is void.

232. *Barleycroft and Coleverton, M. 7 G. Str.* 402. Order of removal from *B.* to *C.* reciting that the party had fifteen years since come with a certificate allowed according to the act of parliament, from *C.* to *B.* and being now actually chargeable they send him back to *C.* This was moved to be quashed, because it is not said that during the fifteen years he gained no settlement in *B.* and because it is not said that the certificate was attested; but only that it was allowed. *Per Cur.* All that is necessary to be shewn is the certificate, and that the party is chargeable, the length of time makes no difference; the

* It was signed, sealed and delivered in the presence of S. H. Mayor and T. M. and it appeared that he was a Justice of Peace. *Fort.* 301.

Justices may attest as witnesses, and allow a certificate at the same time.

Order states certificate to have been allowed according to act, and court will conclude that it was attested.

attestation is by the statute to be made previous to the allowance, and therefore when they say that it was allowed according to the act of parliament we must intend that it was attested, for otherwise it could not be so allowed.

Certificate is not vitiated by a mistake in the direction.

Certificate binding as to all parishes. See pl. 237. But see an exception at pl. 238. Direction and delivery.

What shall be a desertion of a certificate. See pl. 243. &c.

Indenture of apprenticeship not stamped.

Certificate not valid without Justices names. Justices are not obliged, but by their discretion to allow a certificate.

233. Case of the parishes of *St. Nicholas* in *Harwich* and *Woolverstone*, *H. 15 G. 2. 2 Str.* 1163. *A.* came into *Harwich* with a certificate from *Woolverstone*, addressed to the parish of *Harwich* near *Dover Court*, and delivered it to a parishioner who did not appear to be an officer of the parish, nor did the contrary appear. The sessions were of opinion that there was a mistake in the name of the parish of *Harwich*, in the address of the certificate, that *Woolverstone* could not be obliged to receive the pauper. It was ruled by *Chapple* and *Wright* Justices, who were the only Judges present, that *W.* is obliged to receive him, for it is not to be considered as a certificate to any particular parish, but as a general acknowledgment of his being a parishioner of *Woolverstone*, and is conclusive against them for all the world; and the delivery of it to an officer is not necessary. *1 Burr. S. C.* 177. *N. B. St. 8 & 9 W. 3. c. 30.* does expressly require that he shall deliver it to the churchwardens or overseers; but does not require that the certificate should be directed.

234. *R. v. Sowerby*, *H. 24 G. 2. Burr. S. C.* 408. The pauper was born at *Sowerby*, to which place his father came by certificate from *Halifax*. After his father's death at *Sowerby*, his widow and the pauper returned voluntarily to *Halifax*. After some time they went to a third place with a new certificate from *Halifax*, and having resided there for some time under the new certificate, they returned again to *Halifax*. After which the pauper was bound out apprentice in the parish of *Sowerby*, to which the first certificate was given, and there served out his apprenticeship. The sessions held the pauper to be settled at *Sowerby*. But it appearing, upon removal of these orders into the court of *King's Bench*, that the indenture was not stamped, the orders were quashed upon that consideration, without determining how far the desertion of a certificate shall destroy the effect of it.

235. *R. v. Inhabitants of Wooton St. Laurence*, *M.* 8 G. 2. *Burr. S. C.* 581. *Thomas Pryor* was hired and served for a year at *Mitcheldever*, and soon after the end of the year married, and some time afterwards received from the parish officers of *Wooton St. Laurence*, a common printed

printed form of a certificate, acknowledging that the said *Thomas*, his wife and children are settled in the said parish under the hands and seals of the majority of the parish officers, and attested by two witnesses; but the blanks for the allowance of Justices were not filled up, nor the name of any Justices signed thereto. There was no proof of the delivery of the certificate to the parish officers of *Sherborn St. John*, but from the time of his return to *Wooton St. Laurence*, the said parish of *Wooton* had relieved him, to the time of his removal, by order of Justices. The sessions held this to be a settlement in *St. Laurence*. Mr. *Impey* took exception to this order, that the pauper gained a settlement in *Mitcheldever* by service, and that he had none in *Wooton* because the certificate was not signed by a Justice of Peace. *Barleycroft* and *Coleoverton*, *Stra.* 402. In support of the order Mr. Solicitor General argued that it was a good certificate at common law, before the 8 & 9 *W.* 3. as it was a full acknowledgment that the pauper was their parishioner, and having all along submitted to it they are now concluded from disputing it. The case in *Stra.* does not apply to this, which is not within the certificate act, as that was. Lord *Mansfield*: A certificate cannot conclude the parish unless properly signed. The Justices are not obliged ministerially at all events to allow and sign a certificate. They have a discretion not to allow it, if it be liable to objection. The act requires a conclusive certificate to be under the checks and guard therein particularized; as this certificate wants them, it is not a certificate within that act, and if not, it cannot conclude the parish. It is not a consequence, that because the officers may bind the parish in some things that they may in all. If certificates not within the act were to be allowed as evidence and presumption, it would open a door to great litigation among the Justices concerning the degrees of such evidence and presumption. *Per Cur.* The order of sessions must be quashed.

Effect of a Certificate.

236: *Little Kire* and *Woolfall*, *T. 2 Ann. 2 Salk. 530.* A parishioner of *A.* came to *B.* with a certificate, and the Justices reciting that matter, and that he was likely to be chargeable to the parish of *B.* sent him back to *A.* *Per Cur.* The order must be quashed, because he is not

Certificate persons not removeable till actually chargeable.
See pl. 249.

removeable till actually chargeable, by the express words of the act 8 & 9 W. 3.

Certificate concludes the certifying parish, not only against the parish to which it was directed, but against all other parishes.

See pl. 233.

See pl. 238.

See l. 227.

237. *Honiton and St. Mary-Axe, M. 9 Ann. 2 Salk.*

535. *H.* came to *Honiton* with a certificate from the parish of *A.* after this he went to the parish of *B.* and now was sent to the parish of *A.* which then offered to prove that the pauper was settled at the parish of *St. Mary-Axe*? The question was, whether *A.* was bound as to *Honiton* only, or concluded as to all parishes whatsoever. *Per Cur.* Before the statute a certificate was only evidence of a private undertaking between the parishes in the nature of a contract, but now it is a solemn acknowledgment like the consanguinity of a fine, and thereby the party is owned to be legally settled there, and that they will provide for him. The statute says with his, or her family as inhabitants of that parish; and as all other parishes are bound on the certificate to receive him, so that the parish which certifies is concluded with regard to his settlement as to all other parishes. It is an adjudication, an acknowledgment of the parish signed by the proper officers, and made before two Justices of Peace who are the proper judges, and upon less evidence could have adjudged it a settlement, by which sentence all parties would be bound, and there would be no remedy, but to repeal it. *Faly's Poor Law 193. See Salk. 530. Cont.*

N. B. Mr. Justice *Foster* cited this case of *Honiton* from a manuscript of his own, and said that it was resolved in this case that it is final upon the same parish which obtained the first removal, if quashed upon appeal on the merits. For an order quashed upon the merits on appeal is conclusive between the two parishes; if confirmed on the merits, it is final and conclusive upon the appealing parishes against all the world. *Burr. S. C. 307.*

Certificate concerns only the parishes certifying and certificated as to the settlement of an apprentice.
See pl. 239.

238. *R. v. Petham, M. 14 G. 2 Burr. S. C. 154.*

W. S. was born at *Lydd* under a certificate from *Petham*; he bound himself apprentice for seven years to *T. M.* a blacksmith, then residing in the parish of *Tenderden*, who was then and during the whole time of the apprenticeship, a certificate person from *Sellinge* to *Tenderden*. After about two years service in *T.* the said *T. M.* by deed poll assigned all his right and interest, to and in the service of the said *W. S.* unto *J. S.* of the parish of *Lydd*, and the said *W. S.* served him in *Lydd* during the remainder of the term of the apprenticeship being about five years. *Ld. Ch. J. Lee*: There is no doubt, but that

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that if the original binding had not been to a certificate man the assignment would have gained a settlement in *Lydd*; the present case depends upon the construction of the 12 *Ann. c. 18*. The end of which seems fully answered by securing the parish which is obliged to receive the certificate man, and there is no reason to extend it farther. Therefore I think this man gained a settlement in *Lydd*. The other Judges concurred, and observed that any other parishes were not within the grievance mentioned by his Lordship, therefore the act did not provide for them, for which purpose the legislature might have made the binding void, but has only enervated it in one instance, *viz.* With regard to gaining a settlement in the certificated parish, but with regard to a third parish it remains a good binding as before the act, and consequently the assignment is as good as before at common law, and there is no difference whether he was a certificate man or not.

239. *R. v. Sherborne, E. 15 G. 2. Burr. S. C. 183.* Children of *certificated men cannot gain a settlement by service in the certificated parish.*
Humphrey Eyres came into *Sherborne* in 1702, with a certificate from *Thornford* acknowledging him, his wife and family to be legal inhabitants of *Thornford*. About two years afterwards his then wife died and he shortly after married a second wife, the mother of *George Eyres* the pauper. When the pauper was sixteen years of age, his father hired one *Francis Pope* to cut button-moulds for him the said *H. E.* who and his son also the said *G. E.* agreed, with the said *F. P.* that the pauper should serve the said *F. P.* for one year at making button-moulds. It was agreed that the pauper should have nothing for the first month, 1s. a week for the second month, 1s. 6d. a week for the third month, and 2s. a week for the rest of the year, and the pauper received such wages accordingly, and served the whole year, and constantly dieted and lodged with his father in *Sherborne*. *F. P.* was an house-keeper and inhabitant of *Sherborne*, and worked for no person but the said *H. E.* and the pauper also worked with his master during the whole year at the house of *H. E.* and no where else. The point debated in *B. R.* was whether the child of a certificate person, born in the parish to which the father came by certificate, after the certificate was given, can gain a settlement, otherwise than a certificate person himself could. *Ld. Ch. J. Lee*: This question is to be considered on the two acts of 8 & 9 *W. 3.* and 9 & 10 *W. 3.* by the first of which, children born after the certificate may be removed

See pl. 253.

But may gain a settlement in any other parishes in the same manner as any other person may.

See *R. v. Bray, Burr. S. C. 259.*

when

when actually chargeable. I should think the subsequent act is only a direction, by what acts persons who are in parishes under certificates may gain settlements; this person doth by his birth come by certificate into the parish of *Sherborne*. Service is neither of those two methods by which a settlement may be gained by a certificate person. Mr. J. *Denison* observed (and all the court agreed with him) that the certificate provided for the security of that parish only, into which the certificate persons came to reside by virtue of such certificate. But did not exclude the children of a certificate man from gaining settlements in other parishes, in the same manner as any other person might. *Per Cur.* Order quashed.

A. and B are
certificated as
man and wife,
but it afterwards
appears that they
were not so.

240. *R. v. Headcorn*, T. 19 G. 2 Str. 1233. Burr. S. C. 253. The parish of *Maidstone* gave a certificate to the parish of *Headcorn* acknowledging R. B. and Mary his wife, and their four children to be legally settled at *Maidstone*. Afterwards it appeared that the said Mary was not the lawful wife of R. B. but that he had a former wife then living. By the court: The certificate is conclusive. The parish of *Headcorn* were obliged to receive her; and the parish of *Maidstone* are bound to provide for her, and her children by R. B. when they become chargeable.

A. is certificated
by B. to C where
he has a son born,
who afterwards
gained a settle-
ment in F. The
son's settlement
is at B.

241. *R. v. Bugden*, H. 21 G. 2. Wilf. 183. J. G. and his wife were certificated by *Royston* to *Amptill*, where they had a son born, who continued to live with his father till he was twenty-one years of age, and then married at *Amptill*, and lived separate from his father, who went to live in the parish of *Bugden*, where he hired a house of 10 l. a year. T. G. the son, and his family becoming chargeable to *Amptill*, were removed to *Bugden*. *Per Cur.* Where the son becomes independent of his father, he shall not follow the father's last place of settlement, but shall be sent to *Royston*, where the father's settlement was at the time when he separated from his father's house. The son never was at *Bugden* with his father. The case of *St. Michael's* at *Norwich*, and *St. Nicholas* in *Ipswich*, was the very same with this case, and had the same determination; when the father gained a settlement in *Bugden*, he gained it for himself and family, but this son was then no part of his family. Order quashed.

Certificate family
being ill, asked
for some relief,
but received none

242. *R. v. Inhabitants of Kingswood*, E. 29 G. 2. Burr. S. C. 392. Mr. Gould moved to quash an order of two

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two Justices, and the order of sessions confirming it, for the removal of *Elizabeth Tanner* from *Wickwar* in *Glocestershire* to *Kingswood* in *Wiltshire*. The two justices removed her by a common order penn'd in the ordinary form, as being likely to become chargeable to *Wickwar*, taking no notice of her being a certificate person. The case stated was, That *Abraham Tanner*, father of the pauper *Elizabeth Tanner* was born and bred in *Kingswood*, and went afterwards into *Wickwar*, where he lived until the time of his marriage with *Ann* his wife. That upon or soon after the said intermarriage and before the birth of the pauper *Elizabeth*, the churchwardens and overseers of the poor of the parish of *Kingswood* gave a certificate to the churchwardens and overseers of the poor of *Wickwar*, thereby acknowledging the said *Abraham Tanner* and his wife, to be inhabitants, legally settled in the said parish of *Kingswood*. That the said *Abraham Tanner* and his said wife lived in *Wickwar* under the said certificate, from the time of giving thereof until the death of said *Abraham Tanner*, and during that time had issue the pauper and three other daughters, all born in *Wickwar*, and who lived with her father and mother there, from the time of their respective births till the time of the death of said *Abraham*, and from that time with their said mother in the same parish, until the time of the pauper's removal by the said order of the two Justices, and never gained any legal settlement therein. That about nine years ago, one of the daughters (not the pauper) being taken ill of the small pox, the said *Ann* applied to one of the churchwardens or overseers of the parish of *Kingswood*, for relief on that account, who promised her she should have relief; but that she the said *Ann* never saw or heard from him from that time until after her family was recovered of that distemper. That in a day or two after such application, the pauper sickened also of the small pox, and was thereupon, as were also her said sister, who before had sickened as aforesaid, and two other sisters removed to a house which had been provided by the officers of *Wickwar*, for the reception of persons, paupers of *Wickwar*, then and there ill of the small pox; where they the said pauper and her said sisters had recovered of the said distempers, and that during all that time, all necessaries were provided for the said pauper *Elizabeth* and her said sister, by one *Richard Mousal* an inhabitant, but not an officer of *Wickwar*, who provided likewise for the other persons paupers of *Wickwar*, then sick of the small pox in the same house. And that the said *R. M.* after

from any Officer of the certificated parish. But they received some from a person who was not an officer, but who declared that he was repaid, but did not say by whom. It was holden that the family was not actually chargeable.

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said sister was
the pauper
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of Wickwar, then
and there ill of the
small pox; where
they the said pauper
and her said sisters
had recovered of
the said distempers,
and that during all
that time, all
necessaries were
provided for the
said pauper
Elizabeth and
her said sister,
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Mousal an inhabitant,
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for the other
persons paupers
of Wickwar, then
sick of the small
pox in the same
house. And that
the said R. M.
after

wards declared, " he had been paid for the said provision " and maintaining of the said *Elizabeth Tanner* and her " sisters during their illness;" but by whom he did not say. That the said *Ann Tanner* during the time of such illness, rented a house at *Wickwar* aforesaid, where she and her said daughter might have lived, but were removed to the house aforesaid, to prevent the spreading of the said distemper; and that the said *Elizabeth* from and after the time of her recovery supplied herself by her own labour with clothes and provisions, but lived in the same house with her said mother. And that the said *Ann Tanner* or *Elizabeth* the pauper or any of the said *Ann's* family never received any other relief, either from the officers or inhabitants of *Wickwar*, at any other time, or in any other manner than as aforesaid, save one shilling received by the said *Ann* from the said *R. M.* about ten days after her family's recovery of the said distemper, as aforesaid; she being then in great want, which the said *R. M.* also declared he was repaid, but did not say by whom. So that though the order of sessions states a special case, whereby it appears, that she was a certificated person from *Kingswood* to *Wickwar*, yet it did not (as *Mr. Gould* objected) sufficiently state an actual relief received from *Wickwar*, it only states that a person did expend money for her relief, and was repaid the same; but does not say by whom the money was repaid. The court held, that it appeared upon the whole of the orders taken together, that she was a certificate person; and yet was removed without being (or at least appearing to have been) actually chargeable. And they thought, that her being a certificate person, was stated in such a manner, as that the court would take it to be a sufficient and regular certificate, and the rather, because this was a point never controverted at the sessions, but seems to have been acquiesced in without dispute before them. Now a certificate person ought not to be removed until they become actually chargeable; which it does not at all appear that this person ever was. Wherefore, *per Cur.* unanimously, both orders quashed.

Third parties are not within the certificate act, and an apprentice to A. serving B. who is a certificate man, does not gain a settlement, but if A. being a certificate

243. *R. v. Romsey, E. 9 G. 3.* *Saul Bishop* was bound apprentice for four years to *W. Kearly* the of parish of *All-Saints* in *Southampton*, with whom he resided and served there for three years, when it was agreed between his master and himself, and *S. Dagnell* of *Romsey*, that *Bishop* should serve *Dagnell* the remainder of his term, for which *Kearly* was to receive 2s. a week. He served
Dagnell

Dagnell accordingly in *Romsey*, who during the whole time resided there under a certificate; the Justices were of opinion that *Bishop* gained a settlement in *Romsey*. Mr. Solicitor General and Mr. *Wallace* to support this opinion insisted, that as the case was clearly not within the words of the 12 *Ann.* it must stand as before that act, unless some construction brought it within the act, which it does not; for an apprentice thus assigned is said not to be the apprentice of the assignee, but is considered as prosecuting his master's service under the indenture in the parish of the assignee, (*R. v. East Bridgeford.*) On the other side it was insisted, that this case was clearly within the intent and spirit of that act, which was, that no certificate person should communicate a settlement. Lord *Mansfield*: It is self-evident that if a man shall not gain a settlement by being bound apprentice to a certificate man, that of course he shall not by serving him without being bound. Mr. Justice *Yates* cited the case of *R. v. Petham*, and some others, to shew that no man should gain as an apprentice or serving in any other capacity, with a certificate man, a settlement in that parish to which he was certificated. Mr. Justice *Ashton*: If he had been assigned by a certificate person to a third person, he might gain a settlement, for third parties are not within the certificate act.

Determination of a Certificate.

244. *R. v. Silton*, H. 21 G. 2. Wilf. 184. G. M. and his wife came by certificate from *Silton* to *Wincanton*, where they had a son born, whom the parish of *Silton* bound apprentice, in the parish of *Horfington*, he afterwards married, and went to live in *Wincanton*, whence becoming chargeable he was removed to *Silton*. Per Cur. When the parish had bound the pauper apprentice, they had provided for him, and he gained a settlement at *Horfington*, and he was no longer any part of his father's family after he was bound, and he should have been sent to *Horfington*.

245. *R. v. Horsley*, T. 28 G. 2 Burr. S. C. 385. A. G. and his family were certificated by *Horsley* to *Hollingsclough* where his son the pauper was born. The pauper at twelve years of age, went to *Peck*, and was hired and served there for a year. The court was clear that he gained a settlement at *Peck* by this service, and that the case

In what cases a certificate is functus officio. See pl. 238.

A. is born at B. under a certificate from C. and is hired and serves a year at D.

case of the King v. *Silton* (See pl. 244.) was in point, with this immaterial difference, that in the present case the settlement was obtained by a hiring and service, and in the other by serving an apprenticeship.

A. is certificated by B. to C. and becoming chargeable is removed to B. his certificate is then of validity no longer.

246. *R. v. Sudbury*, H. 28 G. 2. 2 Burr. S. C. 373.

Thomas Bladon and his family were certificated from *Sudbury* to *Uttoxeter* in 1728. *Thomas Bladon* died there. Then his widow, and their son *John Bladon* (the pauper) becoming chargeable, were in 1731 sent back to *Sudbury*. The pauper's mother died at *Sudbury*, and in 1732, the pauper was bound by a parish indenture from *Sudbury* to a master in *Uttoxeter* aforesaid, and served his apprenticeship there. The sessions held that this did not gain him a settlement in *Uttoxeter*. *Ryder Ch. J.* now delivered the opinion of the court, that the removal by order of Justices to *Sudbury* did restore him to the power of acquiring a settlement in *Uttoxeter*. The certificate was *functus officio*, it can have its effect but once. The ground and reason of certificates is (see the preamble to 8 & 9 W. 3. c. 30.) that many poor persons willing and able to work, are chargeable to the places where they live for want of work there, though their labour is wanted in others, where they could not go before the certificate act was made. But to continue persons for ever under certificates, would discourage parishes from giving them, as by that means they would be chargeable with them *in infinitum*. This construction satisfies the end of certificates without destroying them, but the contrary determination would be absurd, for it would make certificates continue for ever. The case of *Sowerby* and *Hallifax* has been mentioned as in point, but there is a manifest difference, in that the pauper had not been removed back to the certificating town. It is possible that the indenture was not stampd (as was really the case, and for that reason it was quashed) but however that case, for the before mentioned reason, is no authority in this point. The order must be quashed.

See pl. 234.

Defection of a certificate.

247. *R. v. Taunton St. Mary*, T. 29 G. 2. 2 Burr. S. C. 402. *Robert Bagg* the grandfather of the pauper came in 1702, from *Taunton St. James* to *Taunton St. Mary* with a certificate acknowledging him, his wife and children begotten, or that should be begotten, by him upon the body of his said wife, to be settled in *Taunton St. Mary*. The said *Robert Bagg*, afterwards returned into the parish of *Taunton St. James* and there had *Robert* his son, and father of the present pauper. The pauper's father

Certificates.

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father married in *Taunton St. James* and went and lived with his wife in a house in the said parish apart from his father, and had issue *Robert* the pauper born in *Taunton St. James*. *Robert* the grandfather died in *Taunton v. James*, then *Robert* the father died, and the pauper was bound out an apprentice by the parish of *Taunton St. James*, into the parish of *Taunton St. Mary*, and served his apprenticeship there. Mr. J. Denison, (there being then no Chief Justice) delivered the opinion of the court. Two matters of consequence have been started, whether the act of 8 & 9 W. 3. c. 30. extends to the grandchildren, of a certificate person, or is confined to immediate children, and whether the son of this certificated man was emancipated from his family or not. We are unwilling to give our opinion on either of these points, as we hold that the certificate itself was of no force, at the time of the grandson's being put apprentice in *Taunton St. Mary*, but was then totally at an end. For in so long a course of time as this, and after such a desertion, we will conclude that there was an end of it, and it ought to have been given up to the parish of *St. James*. (*R. v. High Bishopside*.) The father and grandfather of the pauper could not have gone to that parish without a new certificate. The order of sessions must be affirmed.

248. *R. v. Great Torrington*, T. 30 G. 2. Burr. S. C. 428. *M. B.* came with her father into *Biddesford*, by virtue of a certificate from *Lancraft*, and was bound an apprentice by the officers of the parish of *L.* and lived in *Great Torrington* for some years, under the said indenture, and after the expiration of her apprenticeship she hired herself to, and served for a year, a person in *Biddesford*. Mr. Gould moved to quash this order, and urged that the pauper having served an apprenticeship in a third parish, became emancipated from her father's family; and *sui juris* and quite clear of the certificate, and as much at liberty to gain a new settlement in *Biddesford*, as any uncertificated person whatsoever. *Per Cur.* The order must be quashed. Same resolution. 2 Burr. S. C. 429.

A. certificated to
B. serves an ap-
prenticeship in
C. A. may then
gain a settlement
in B. by hiring
and service.

By what means a Settlement may be gain'd
under a Certificate.

249. *R. v. Burckear*, E. 5 G. Str. 193. On a special order See the preced-
of sessions the case was fitted for the opinion of the court. ing. pl.

Abraham

* It was surrendered to her by her father. See Burr. S. C. 211. Certificate person gains a settlement by the surrender of an estate to his wife, and inhabitation on the same.

Abraham Hatchett being legally settled in the parish of *Burclear*, about eighteen years since married, and had four daughters. About eight years since, he came with his wife and children into *Eastwoodhay* as a certificate man. Whilst they were there, a copyhold of 20 l. *per annum* descended * to his wife which they enjoyed for five years till her death; and then according to the custom of the manor it descended to the eldest daughter. About half a year ago the father asked relief in *Eastwoodhay*, and thereupon the sessions sent him back to *Burclear*. Before they took up the case upon the special state of it, an objection was made to the order of the two parties, that they only adjudge him likely to become chargeable: Whereas a certificate-man is not removeable till he becomes actually so. And though the order of the sessions states, That he asked relief of the parish; yet one order shall not be made good by another, no more than it can by matter alledged in the return; to which it was answered, That if the order of two justices is to stand by itself, then it will be well enough, for it is a general order of removal wherein no notice is taken of his being a certificate-man: Besides that order is entirely out of the case; for the special matter being referred to the court they are to judge upon that only. *Quod fuit concessum per curiam*. Then it was moved to quash the especial order, because though the man came into *Eastwoodhay* with a certificate, yet the enjoyment of the copyhold for five years, during which time he was not removeable, had gained him a settlement there. On the other side it was said, that the 9 & 10 W. 3. c. 11. having provided that a certificate-man shall not gain a settlement, unless he takes a lease of 10 l. *per annum*, or serves a parish office, and that being an explanatory act, therefore this man not coming within either of those cases was, notwithstanding the descent of the copyhold to his wife, removeable upon his becoming a charge to the parish. *Et per Curiam*: This is not an explanatory, but a new law, and must therefore receive a liberal construction. This is a case more reasonable than either that are mentioned in the clause of exceptions in the statute. If a certificate-man by taking 10 l. *per annum* gains a settlement, *a fortiori* shall he that has an estate of his own; especially in this case where he does not come to it by act of his own (which might savour of fraud) but it is cast upon him by the act and operation of law. If he that serves a parish office gains a settlement upon account of his presumed ability, with

with greater reason shall he that has ability of his own visible to all the world. It has been already adjudged that any other person, by the descent or purchase of a freehold or copyhold, or by becoming intitled to a lease for years gains a settlement, and it cannot be supposed the parliament intended to put a certificate man in a worse condition. The value of the copyhold is not material, for it is its being his own makes him not removeable; a man must take a tenement of 10 *l. per annum* to gain a settlement, but yet he may come to settle upon a tenement of his own though of ever so small a value. This man therefore being for five years removeable from *Eastwoodhay* has gained a good settlement there, and the order to remove him from thence must be quashed.

250. *Cranley v. St. Mary Guildford*, H. 8 G. Str. 502. A certificate man agreed with the lessee of a mill that he should occupy it, paying 12 *l. per ann.* There was no underlease or assignment, but the man occupied the mill for two years. *Per Cur.* If this be not an absolute lease for a year (as Mr. J. Eyre thought it), the rent being reserved as the rent for a year, yet it is undoubtedly a lease at will, which is sufficient to gain a settlement.

251. *St. John's and Amwell*, M. 9 G. A certificate man took a farm of 10 *l.* a year, part of which was in *St. John's* parish, and part in *Amwell*, but the greater part together with the house lying in the parish which received the certificate; the court held it a settlement there. *Str.*

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252. *R. v. Deddington*, T. 16 & 17 G. 2. Burr. S. C. 220. *R. Maynard* came with his wife and his son the pauper, by certificate from *Duns Tew* to *Deddington*. *R. Maynard* afterwards purchased a house in *Deddington* for which he paid 42 *l.* and lived in it for many years, with his wife and son, who afterwards married and had several children. *R. Maynard* sold the said house, and his son who had no interest therein, becoming chargeable to the parish was removed to *Duns Tew*. His father was then living. *Per Cur.* It is not repugnant to the words and sense of the statute 9 & 10 W. 3. c. 3. to admit a settlement to be gained by a certificate man by a purchase of a tenement within the parish. The parish will not be safer by the notice arising from renting a tenement of 10 *l. per ann.* than by the notice arising from a purchase. The notoriety is equal in both cases. If this act was taken so strictly as it has been contended for, a certificate man could not gain a settlement, though he should purchase

chafe, 5000*l.* a year. This was the opinion of the court in the case of *Burdear* and *Eastwoodbay*. It being then agreed that the old man gained a settlement by the purchase, it necessarily follows that his son having gained no settlement of his own, must follow that of his father. Order affirmed.

A. was born in B. under a certificate, and is hired and serves a year there.

253. *R. v. Bray*. *H. 19 G. 2 Burr. S. C. 259*. The father of the pauper came by certificate to *Bray*, after which the pauper was born, and at the age of twenty years, was hired for and served a year in *Bray*. By the court: The case of *Sherborn* (see *pl. 239.*) is in point. The pauper gained no settlement by this service. See the same resolution in *Burr. S. C. 314.*

CHAP.

C H A P. VIII.

Apprentices.

Who may take Apprentices. See 5 *Eliz. c.*

4. *f.* 12, 25. &c. — Who are compellable to serve as Apprentices. 5 *Eliz. c.* 4. *f.* 35 & 36. — By whom and in what Manner poor Apprentices are to be bound. 43 *Eliz. c.* 2. *f.* 5. and 5 *Eliz. c.* 4. *f.* 25. — To whom poor Apprentices may be bound, *pl.* 254. — By whom, *pl.* 261. — At what Age, *pl.* 263. — For what Time, *pl.* 264. — How, or by what Instrument, *pl.* 268. — Allowance of the Justices, *pl.* 274. — Stamp Duty and Consideration Money, *pl.* 275. — Of Apprentices bound out by publick Charity, *pl.* 283. — Of the Inrollment, *pl.* 285. — Jurisdiction of the Justices and of the Sessions, *pl.* 297. — Summons of the Parties, *pl.* 294. — Causes of Discharge, *pl.* 296. — What shall be considered as a Discharge, *pl.* 305. — Returning the Money given with an Apprentice, *pl.* 311. — Interest of, and Claim upon Executors and Administrators, *pl.* 312. — Assignment of Apprentices, *pl.* 320. — Settlement of Apprentices, particularly by inhabitants *pl.* 330. — In an Extraparochial Place, *pl.* 342. — Settlement under Certificates, *pl.* 343. — Certiorari, *pl.* 349.

254 **A**PPRENTICES may be put to clergymen, according to the opinion of all the Judges upon reference made to them, as *Dalton* professes to have been credibly informed, or at least (he continues) they are chargeable to contribute towards the putting out of apprentices. *Dalt. ch.* 46.

Apprentices.

255. *Anonymous*, *H. 11 W. 3. Salk. 67.* The Justices may force a master to take an apprentice; for a power to compel the master to receive him, is consequential to the authority given the Justices by statute to put him out, and if the master turn him away they may make him refund. 1 *Lev. 91.*

256. *R. v. Grosse*, *T. 6 W. & M. Comb. 289.* Exceptions were taken to an indictment for refusing an apprentice. First, that it is not said that the two Justices lived in or near the place. Secondly, that the Justices have no such power. Thirdly, It is not averred that the parents were not able to maintain the child. *Holt Ch. J.* As to the first exception the statute is but directory, and it has been settled that the Justices have power to make such an order, and it is in the discretion of the churchwardens and overseers, (as appears by the preamble 43 *Elix.*) whom they shall think their parents not able to maintain.

The sessions are the Judges of the propriety of compelling a person to take an apprentice.

A merchant not a proper person.

257. *Minchamp's case*, *T. 13 W. 2 Salk. 491.* He was a merchant at *Mile-end*, and two Justices having bound a poor girl apprentice to him, upon his appeal the sessions discharged the order; because they thought it unfit to compel a merchant to take an apprentice. Which order of sessions was affirmed, because the statute 8 & 9 *W. 3.* having given an appeal in this case to the sessions, it is in the discretion of the Justices there to determine whether it was or not fitting to force an apprentice upon any one. 6 *Mod. 163.* 1 *Lev. 84.*

258. *R. v. Gould*, *E. 3 Ann. 1 Salk. 381.* The defendant was indicted because a poor boy having been put apprentice to him pursuant to the statute, he *vi & armis* refused to provide for him. *Per Cur.* Since we allow the Justices power to put out apprentices, we must allow an indictment for disobedience, either in case of not receiving, turning off, or not providing for such apprentices as the law requires, and the *vi & armis* is surplusage.

259. *R. v. Wagstaff*, *E. 13 Ann. Fol. 225.* The churchwardens and overseers of the poor, by the assent of two Justices of the Peace, bound one *John Norris* a poor child of the parish, to one *Wagstaff* an attorney as his apprentice, and there was an appeal to the sessions; the sessions order *Wagstaff* to seal the counterpart of the indenture which he refused, and removed it by *certiorari* into the King's Bench. Mr. *Page* moved to quash the order; because in the close of the indenture it is said, that the master at the end of the term, shall give his ap-

apprentice two suits of clothes, one for holidays and the other for working days. Upon debate, the court held this to be ill. For the Justices can't order him wages during the term of his apprenticeship, they must only order him a maintenance as an apprentice, and can't order him any thing after the term is ended. So that the order of sessions must be quash'd.

260. *R. v. Trevilian*, E. 20 G. 2. *Stra.* 1268. Indictment for not receiving an apprentice. Indictment for not receiving an apprentice. It did not appear upon the face of it to be a binding within the 43 *Eliz.*—Court would not meddle with the general question whether an indictment would lie or not. *V. 8 & 9 W. 3. c. 30. s. 5.*

By whom to be bound. See 5 G. 3. c. 46.

261. *R. v. Inhabitants of St. Mary in Reading*, H. 3 G. 3. *Cas. of Sett.* 77. A poor person binds himself voluntarily as an apprentice, and no Justices hands were put to the indenture, the sessions held that he did not gain a settlement. *Per Cur.* The statute 43 *Eliz.* only extends where a poor child is put out in a compulsory way, but here it is by consent, and therefore the statute does not extend to it.—This case is likewise reported in *Fol.* 168. where another objection is stated; that the indenture was void because an infant could not bind himself; but the court determined that the binding did gain him a settlement, for that an infant may make an indenture for his own benefit. See pl. 263.

262. *R. v. Chalbury*, E. 9 G. 2 *MSS.* A pauper was bound an apprentice to one *Colmac* of *Chalbury*, by the churchwardens and overseers of the poor of the parish of *Alscot*, with money belonging to *Alscot* parish, till he should arrive to twenty-three years of age. The orders stated further that there were in the parish of *Alscot* two churchwardens, two overseers and two constables; the question was upon the 7 *Jac.* 1. c. 3. (which says that the parson or vicar of every such parish where there is charity money, shall together with the constables, &c.) whether the binding was legal, the parson not being made a party, which it was insisted he ought to be, as in a charter where tis said the mayor with the burgesses, or the greater number of them to do any act. There the mayor is a necessary party in the doing of the act. But *per Cur.* There is no necessity to construe an act of parliament with the same strictness as a charter: In the case of the mayor, the law considers

What persons consent not necessary to the binding even upon the statute. Poor apprentice may be bound for a less time than till he shall be twenty-four years of age, but not for a longer time.

Apprentices.

considers him as the head officer, and the person to hold the assembly, but in the case of the poor the parson is not so necessary as the churchwardens or overseers. Another objection was that the pauper was bound to the age of twenty-three, and not till twenty-four as the act requires; but *per Cur.* the words of the act mean that apprentices shall not be bound beyond the age of twenty-four; but do not intend any necessity to have them bound until the age of twenty-four.

At what Age.

See pl. 263.
An infant's Indentures voidable only.

See pl. 264.

263. *Gilbert v. Fletcher*, T. 4 Ch. Croke Char. 179. An action of covenant was brought against an apprentice for departing his service without licence: Defendant pleaded nonage at the time of making the indenture; upon demurrer it was argued at the bar, That this indenture should bind the infant, because it was for his advantage to learn a trade, and that he was also compellable by 5 Eliz. to be bound out apprentice. But the whole court resolved, that although an infant may voluntarily bind himself apprentice, and if he continues apprentice for seven years he may use his trade; yet neither at common law nor by the words of the statute of Eliz. shall an infant be bound by a covenant or obligation of apprenticeship: But if he misbehave himself, his master may correct him, or complain to a Justice of Peace to punish him according to the statute; but that no remedy lies against the infant on such covenant, and therefore judgment for the defendant.

For what Time.

A person being bound apprentice in a corporate town for less than seven years gains a settlement.

264. *R. v. Inhabitants of St. Nicholas in Ipswich*, M. 10 G. 2. Burr. S. C. 91. The question was whether, a person bound an apprentice in a corporate town, or city, for a less time than seven years, gains a settlement there, by such binding and service under it. Lord Hardwicke: This case depends upon the 26 and 41 sections of 5 Eliz. c. 4. by the first of which, apprentices may be retained in corporate towns for seven years at the least, and by the latter section, all indentures, &c. of apprenticeship, otherwise than by this statute ordained and limited, are declared to be void in law, to all intents and purposes. I am of opinion that the latter clause refers and reaches to

to the former, but that it does not make such indenture void, but only voidable by the parties themselves, and by them only. There are many cases, where according to the strict words of the statute a thing is made void, yet has been held not to be absolutely void but only voidable. *Hob.* 166. 1 *Sal.* 68. The principal objection to this binding, is founded on the determination of *Cuerden* and *Leyland*, where the indenture was holden to be absolutely void for want of being stampd. But that statute 8 *Ann.* c. 9. not only declares that all such unstamped indentures shall be void, but further adds, and not available in any court or place, or to any purpose whatsoever; and there is a subsequent clause, that no such indenture shall be admitted as evidence in any suit to be brought by any of the parties thereto, unless such party in whose behalf it is produced shall make oath, that the whole sum really given with the apprentice was truly inserted. In that act therefore it was superadded that such indenture should not be available in any court or place, and that it should not be given in evidence, and yet the order of sessions in that case was grounded upon the indenture which was not stamped, nor was the duty paid. Therefore the sessions admitted in evidence what they ought not; which was a sufficient ground to quash their order. The statute 5 *Eliz.* rather respects the particular advantage of corporations, than that of the publick in general, and therefore it would be inconvenient to make too rigid a construction of it; which was likewise the opinion of the other Judges. 2 *Str.* 1066.

265. *R. v. Woolstanton*, *Hil.* 12 G. 2. It was stated in an order of sessions, that nine pound ten shillings was given by a parish with the pauper when a boy, as apprentice to a weaver; that the indenture of apprenticeship, which was not for any certain time, was signed by an overseer of the parish, but that it was not signed by the pauper; that the pauper who was a cripple from his birth, was carried against his consent by his grandmother to the weaver; that the weaver had no stock nor work to employ the boy; and that after the pauper had lived with the weaver six months, the weaver ran away and left him; and the question was, Whether the pauper gained a settlement, by living in this manner with the weaver? And it was holden that he did. *Per Cur.* The statute for putting out parish boys apprentices, as to that part which speaks of binding them till the age of 24

Not necessary
that parish boys
should be bound
to the age of 24.

Indenture binding a girl apprentice is not void for want of the alternative "or till marriage," nor voidable unless it be by the parties themselves.

years is only directory; but if it were compulsory, the indenture would, for want of this, be only voidable. The signing of an apprenticeship indenture by a boy bound out by the parish is not necessary, there are some circumstances in this case which seem to be fraudulent; but as it is not expressly stated in the order of sessions that there was fraud, this court cannot presume there was any. *N. B.* I was favoured with this case by a gentleman of high rank in the profession, which, with Mr. Burrow's report, See *pl.* 274. seems to form a complete state of this case, and of the opinion of the court, upon the whole of the matter before them.

266. *R. v. inhabitants of St. Petrus. T. 15 G. 2. Barr. S. C. 249.* A girl aged nine years was bound apprentice by the parish until twenty-one, absolutely without the alternative till time of marriage, and served near five years under this indenture in the parish *St. Petrus*; her mistress then delivered up the indenture by indorsement on the back of it, and all her right and interest in the said apprentice to *P. F. of Stoke Fleming*, and the girl being then of the age of fourteen years voluntarily bound herself by indenture to the said *P. F.* for six years or thereabouts, to learn housewifery business, and such other business as he should shall have to do, and to serve him after the manner of an apprentice; under this indenture she served about six years, until she intruded into the parish of *St. Petrus*. At the general quarter sessions held in and for the borough of *C. D. H.* and parish of *Town-stall*, the indenture of 1733 was by order of the said court vacated and made void, and the pauper was by virtue of the said order removed to *Stoke Fleming*; afterward the sessions vacate the order of the two Justices. *Per Cur.* No stress is to be laid on the circumstance of the sessions having vacated the first indenture, because it does not appear that they have pursued the directions of *5 Eliz. c. 4. s. 5.* It is not void for want of the alternative of marriage, though perhaps not obligatory upon the parties. And though an assignment of an apprentice, (except in *London* by custom, cannot in strictness be made, yet as this assignment was by assent of the mistress, the service under it will be good for the purpose of gaining a settlement, for the service continued under the first binding. Though in the *Ipswich* case the indenture was holden not to be binding as between the parties, yet it was holden to be neither void nor voidable by the parish as to the gaining a settlement under it. It would

Would be extremely hard if a poor child who had served ten years under an indenture should lose the benefit of a settlement because the Justice's clerk was ignorant or negligent. Order of sessions quashed.

267. R. v. *Ecclesal Bierlow, E. 6 G. 3. 2 Burr. 8: C.*
562. Samuel Wilshaw was bound out at sixteen years of age by the parish, an apprentice to an inhabitant of the township of *Ecclesal Bierlow*, for the term of eight years. He resided there till he had attained the age of twenty-one, when his master and he agreed to cancel the indentures, and actually did so. Afterwards he hired himself for a year at *Warflow*, and served the whole year there. The sessions adjudge him settled at *Ecclesal Bierlow*. In support of the order it was urged, that the apprentice was not *sui juris* when he entered into the contract to serve in *Warflow*, nor could he be compelled to perform it. It has been determined that an apprentice under age cannot dissolve the indentures. This being a binding under the 43 *Eliz.* the apprentice, though above twenty-one at the time of the transaction, cannot cancel the indentures without the approbation of the officers of the parish. Lord *Mansfield*: There seems to be no necessity for the parish officers joining in the consent to discharge the apprentice. There is no authority for it, and I see no inconvenience which can arise from the contrary practice. The act of parliament was necessary to make valid the binding of the male parish apprentice till his age of twenty-four; without that act he could not be bound longer than till twenty-one. But the discharge of the apprentice concerns the master and the apprentice only; the latter part of the apprentice's time is most serviceable to his master, when the apprentice therefore is of age, the master and he agreeing to it may dissolve the contract. Mr. Justice *Wilmes* agreed that the indentures may be cancelled without the consent of the parish officers; if so then this person was *sui juris* when he hired himself at *Warflow*, and gained a settlement there. Mr. Justice *Rates* observed that this objection of the want of consent of the parish officers, comes from the town of *Warflow*, which had nothing to do with the binding. Mr. Justice *Aston* concurring in it, the order was quashed.

In what Manner or by what Instrument to be bound. See 31 G. 2. c. 11.

268. The case of *Chesterfield, T. 9 W. Salk. 479.* *Ferrison* was a servant to Sir P. J. at *Waltham*, afterwards he left his service, and was put out by his said master to a barber at *Chesterfield*, who was to teach him to shave and make perriwigs, for which he was to have five pound from Sir P. J. *Ferrison* continued a year in this employment, according to covenants between Sir P. and the barber; but to which *Ferrison* was not a party. The court held this to be no settlement at *Chesterfield* because it was no service, and that *Ferrison* was no more than a boarder there for his education, which is no settlement.

Pauper believes that one part of an indenture was prepared.

269. *R. v. Stratton, E. 21 G. 2. Burr. S. C. 272.* *Stephen Petbick* the pauper at the age of fourteen years, was by his mother (being then a widow) placed as an apprentice with his brother-in-law *John Petherick*, by trade a cordwainer in the parish of *Stratton* for six years, to learn the said trade: But at the time of placing him as aforesaid, no indenture of apprenticeship was executed. The mother agreed to pay to his master 4*l.* in hand, and 4*l.* at the end of three years, and his master was to find him in meat, drink, washing and lodging, during the said six years, and his mother was to find him in clothes during the said term. All which was performed accordingly, and the said *Stephen Petbick* believes that in or about the last year of the said term one part of an indenture was prepared, in order to bind him an apprentice to the said *John Petherick*, pursuant to the said contract or agreement. But he doth not remember that he executed the said part, or that it was executed by his mother, and the said *John Petherick* or either of them, nor what is become of the said one part. It was moved to quash these orders, for that all this doth not amount to such a binding as will gain a settlement, there being no indenture duly executed. The court seemed to think this exception too strong to be answered; and made a rule to shew cause why the order should not be quashed: Which rule was afterwards made absolute without defence. And both were quashed.

270. *R. v. Mawnam, H. 22 G. 2. Burr. S. C. 290.* Objection to an order of removal, that the apprenticeship was

was only by a parol binding, not by indenture, whereas the act of 3 & 4 W. & M. c. 11. s. 8. is confined to a binding by indenture. And the objection was allowed by the court. But see 31 G. 2. c. 11.

271. *Case of St. Saviour's Southwark, T. 23 G. 2. MSS.* Indenture not proved to be lost nor to have existed, unless by the mother of the apprentice, who declared that she heard his father say that he was bound to him by indenture. Order states that *Jos. Hunt* born in the parish of *St. Thomas* in 1718, lived with his father in *St. Hellen's* till 1733. And that his mother gave evidence of his being bound apprentice by indenture to his father in *St. Hellen's* in 1733, as she was informed by the father, that she never saw the indenture, but that it was reputed to have been delivered to the father. It appeared that *Jos.* served his father in *St. Hellen's* till 1738, when the father died, that the father always found him in clothes: That in 1748, *Jos.* was applied to at *St. Hellen's* to know if he had any indenture, that *Jos.* said he could not find it: That no evidence was given of its being lost, nor was it produced; that *Jos.* rented a house at 5*l.* per ann in *St. Hellen's* and was rated to the land-tax, and not to the poors rate, and that he was employed by his father. Two Justices removed *Jos.* and his wife, and four children from *St. Saviour's* to *St. Hellen's*. Upon appeal the sessions state it specially as above, and it was excepted in *K. B.* that no parol evidence ought to be admitted of an indenture; and *per Cur.* The indenture is what the mother was informed of, and it is a question whether the fact be sufficient to bind the pauper within the act. The facts stated do not warrant the determination of the Justices. And besides it appears that he served only five years under an indenture, not proved to have existed, nor to be lost. Order quashed.

272. *R. v. Whitechurch Canonickorum, T. 5 G. 3. Burr. S. C. 540.* The pauper *John Gay*, being of the age of—years, agreed with a stone-mason that that he should take the said *John Gay*, apprentice for six years, to teach him the trade, and that indentures should be executed, accordingly he went and served five years, during which time he received no wages, only a little pocket money, and considered himself, and was considered by his master, as an apprentice, they parted by consent; but no indentures were ever executed. It was contended, that this was a good hiring expressed or implied. *Per Cur.* The objects are different. A binding as an apprentice, and hiring as a servant, cannot be converted one into another. And the case of the King, and *St. Mary Kalendar* in *Winchester*, was mentioned by the court as in point.

An apprentice cannot hire himself but as an apprentice.

273. *R. v. Inhabitants of All-saints, H. 10 G. 3. Abraham Lewis* made an agreement together with his father, not stamped, with *Mary Tringham* in the following words, "Be it remembered between *M. T.* of the parish of *All-saints*, and *Lewis* the father, and *Abraham* the son, "whereas *Abraham Lewis* the younger is by consent of *Lewis* the elder to be bound an apprentice for seven years to *M. T.* the said *M. T.* doth covenant to pay "to *Lewis* (the pauper,) for the first two years 1 l. 5 s." He entered into the service, continued therein two years, and received the money, but gained no subsequent settlement. It was contended that *Abraham Lewis* ought to be considered as a servant, as it is stated that he lived in pursuance of the agreement. Mr. Justice *Yates*: An apprentice cannot hire himself but as an apprentice; if this was to be a settlement, the statute of *Queen Anne* would be eluded. The master must have a power over him the whole year, here he had not; the court held it no settlement. Order quashed; see *Dalton* 58.

Allowance of the Justices.

It must appear that one of the Justices allowing, is of the quorum. Sed Qu. See the 26 G. 2. c. 27. See pl. 265.

274. *R. v. Woolstanton, E. 12 G. 2. Burr. S. C. 129.* A poor boy born and settled at *Woolstanton*, as bound apprentice by the parish officers thereof, to a master at *Uttoxeter*, by the assent of two Justices of the peace, but it was not alleged that either of them was of the quorum, and the boy himself was not a party to the indenture. Lord Ch. J. *Lee*: The act of the 43 *Eliz.* requires one of the Justices to be of the quorum through all the clauses of it, and the 8 & 9 *W. 3. c. 30. s. 5.* recites this clause as expressly requiring one of the Justices to be of the quorum in this case. This point has been determined before in the case of *Horley and Carlton*, that it must appear that one of the Justices was of the quorum.

Stamp Duty.

Indentures are to bear date the day of the execution. If the indentures are not stamped, and the duty is not paid, they cannot be given

275. *Cuerden and Leland, M. 4 G. 2. MSS.* By an order of Justices a pauper was removed to *Leland* as the place of his last legal settlement; from this order there was an appeal; and the case was specially stated: that there was an agreement that *William Sumner* should be put apprentice to *John Sumner* in *Cuerden* parish, and he accor-

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accordingly went to live with him there, and at the next ^{in evidence, nor} *Whitsuntide* was bound apprentice to him for seven years ^{are available to} by indenture; which indenture was antedated as of the ^{any purpose} *February* before, when the apprentice first came. By 8 ^{whatsoever.} *Q. Anne. c. 9. f. 35.* The indentures are to bear date the day of the execution; on executing the indentures *Sumner's* mother paid 20*s.* to the master, which sum was mentioned therein, and the pauper served under these indentures in *Cuerden* till his master's death; which was about three years. The duty of 6*d.* in the pound was never paid for the 20*s.* nor was the indenture ever stamp^{See 8 Ann. c. 9. f. 35.} with an additional stamp according to the act. *Fortescue* Justice, upon this case being referred to him, thought the pauper had gained a settlement by the service at *Cuerden*. The Justices at their sessions in *Michaelmas* 1730 discharged the first order of removal upon Judge *Fortescue's* opinion; but these orders being removed up it was moved to quash them; for that by the 8 *Anne. c. 9. f. 39.* made perpetual by 9 *Anne. c. 20. f. 9. 6 d.* in the pound is laid as a duty on every 1*l.* given with apprentices not exceeding 50*l.* and the indentures are to be stamped in six months after the date, and if not so stamp^{20 G. 2. c. 45- and 6 G. c. 40. See pl. 273.} the indentures shall be void, and not available in any court or place, or to any purpose whatsoever. And the apprentice to whom the same shall relate, shall be utterly incapable of being free of any corporation, by virtue of such apprenticeship or of exercising the intended trade or employment. It was argued in support of the order, that by the statute of *Car. 2.* forty days residence in a place gains a man a settlement. That apprentices need not give notice, but that forty days residence gains them a settlement. It is true that by this statute of *Queen Anne* which is for granting a supply, it is provided that indentures shall be stamp^d and returned into the office, and there are general words that the indentures shall otherwise be void and of no effect. But that cannot affect the present case; the act says no more than that the indenture shall be void, and the apprentice not at liberty to follow his profession. The question is then from what time the indenture shall be void, which shall be not *ab initio*; but from the time fixed for paying the duty; for if the master lives fifty miles from *London*, the duty is to be paid in three months, if one hundred at six months, so that the apprentice gains a settlement before the duty is paid, *viz.* in forty days, and the master not paying the duty cannot defeat the settlement which the apprentice had gained before. On the other side it was said, that it is admitted

admitted that an apprentice gains a settlement if he serves forty days under an indenture that can properly be called an indenture; but this is not an indenture by the express words of the act, and to say *Sumner* had gained a settlement, is to aver against an act of parliament; for if he had gained a settlement it is available to some purpose. By 5 *Eliz.* an indenture is necessary to make an apprenticeship; by this of Queen *Anne*, 'tis an incomplete indenture till stamp; and when stamp 'tis good *ab initio*; but if not stamp all is void, or at least can be good but during the time given by the statute for stamping it, and may be compared to the case of a bargain and sale. By statute *H. 8.* All deeds of bargain and sale must be enrolled within six months; if not enrolled in that time all matters consequent upon them cease and become void, but upon being inrolled all intermediate acts become good. Thus, if there be a deed of bargain and sale to make a tenant to the *præcipe*, the recovery shall be good till the time of inrolling be expired, but afterwards void *ab initio*. The words of the statute are a declaration by the legislature, that if an indenture of apprenticeship is not inrolled, no advantage can be had of the apprenticeship; and though the subsequent clause enumerates particular disabilities without mentioning this of not gaining a settlement, yet these particular disabilities were before comprehended under the general words, and 'tis common in statutes to mention particular cases which fall within the general words, without restraining the general words, or enervating the force of them. As to the objection, that 'tis hard the neglect of the master should prejudice the apprentice, 'tis plain the legislature intended he should be prejudiced thereby in the particular instances mentioned in the last clause, and why not in the present case? The Chief Justice and Mr. Justice *Page* were of opinion, that *Sumner* had gained no settlement by his service in *Cuerden*, on these words of the statute, which are very positive, that the indenture shall not be available in any court or place. Mr. Justice *Probyn*: The question is not on the meaning of the general words, but whether general words may not be restrained by particular words subsequent. Suppose the general words as now, and that a man hath lands by a deed of bargain and sale, and takes an apprentice by indenture who lives with him forty days, the apprentice will have a settlement though the deed afterwards becomes void for want of inrolment within six months. Mr. Justice *Lee* agreed with *Probyn*; for 13 &

14 *Car.* 2. directs that a pauper shall be sent to the place where he was last legally settled, for forty days, and it hath often been determined that legally settled and irremoveably settled are equivalent terms*, so that the party is actually settled in the place from which he is irremoveable for forty days. Now *Sumner* was plainly irremoveable from *Cuerden* for that time, which is the difficulty with me. Adjourned; but in citing this case *Hardwicke* Ch. J. said in the case of *St. Nicholas* and *St. Peter Ipswich*, that this case was determined on the words of the act, that the indentures shall not be available in any court or place.

276. *R. v. East Knoyle, E. 13 G. 2.* Mr. *Gundry* moved to quash an order of sessions, 1st, Because the Justices have admitted parol evidence of an indenture. 2dly, Because the sessions have stated, that it does not appear, whether the indenture were stampd, or the stamp duty was paid as required by 8 *Queen Anne* c. 9. and in case of *Cuerden* and *Leland*, determined per *Hardwicke* Ch. J. It was ruled, that an indenture not having paid the stamp duty shall be void to all intents and purposes; so as to prevent the apprentice exercising of his trade, and to defeat his settlement. That it has been a constant rule never to admit parol evidence to prove an apprenticeship under an indenture, without proving the indenture to be lost or destroyed by some accident or other, and so it has been determined. *Cur.* The special order has stated, "It "not appearing where the indenture was stamped," so that they do not expressly say the duty was not paid, and we never presume a fraud if one be not expressly stated, and after length of time, parol proof of an apprenticeship shall be sufficient, because in all probability the indenture may be lost, and indeed they are frequently burnt when delivered up by the master at the expiration of the term. Order confirmed. *Burr. S. C. 151.*

277. *R. v. Northoram, E. 13 G. 2. 2 Stra. 1132.* The mother of a lad proposed to put him out apprentice to an inhabitant of *Northoram*, who refused to take him because he wanted clothes, upon which the grandfather agreed to pay 1*l.* 10*s.* to the master to clothe the boy with, in pursuance of which the master did lay out 1*l.* 10*s.* in clothes for the boy, and he was bound by indenture, in which no mention is made of the 1*l.* 10*s.* nor was any duty paid; the grandfather paid the 1*l.* 10*s.* and the apprentice served out his time, which the sessions adjudged to be a settlement. *Per Cur.* This is not like the

* Sed qu.

Order states that it did not appear where the indenture was stamped.

See pl. 182.

pl. 271.

pl. 699.

Where the master is only an agent for the apprentice's friends to lay out money for his use.

the case of *Cuerden and Leland*, where money was actually given to the master for his own use. whereas here the master is a mere agent of the grandfather to lay out 17. 10s. for him; it could make no difference whether the master did it, or any other person. This is not a case within the intent of 8 Ann. c. 9. s. 39. the positive words of which in a case expressly within it, obliged the court in the other case to hold it no settlement. *Burr. S. C. 144.*

Sessions state that the indentures were not executed by the master, nor stamped for the consideration money, and that it did not appear that any was paid or agreed to be paid to the master.

278. *R. v. Inhabitants of St. Peter's on the hill in Chester*, H 14 G. 2. MSS. *William Jackson* was legally settled at *St. Mary* on the hill by a hiring and a service, and afterwards was bound an apprentice in *St. Peter's* in *Chester* to a carpenter for seven years, two of which he served in *St. Peter's*, but during those two years he lived, eat and lodged at night with his mother in *St. Olave's*. The indentures were not executed by his master, nor stamp'd for the consideration money, nor did any consideration money appear to be paid or to be agreed to be paid by the indentures. *William* dies, and his wife and children becoming chargeable in *St. Olave's* were removed to *St. Mary's* on the hill, the husband having gained no other settlement in *St. Olave's*. The case of the King and inhabitants of *St. John's* in the *Devises* T. 10 G. 1. was cited. *Lee Ch. J.* It has been objected that the indentures are not stamped with a sixpenny stamp; but as that part is not stated in the orders, I do not see how it can come before the court; for we cannot take notice of any thing but what is strictly before us. It is not found in the orders that the indenture is not stamped with a sixpenny stamp; but that it is not stamped for the consideration money: and there being no consideration money paid, the stamp is not required. It is farther objected that this indenture is not good because not executed by the master, but that makes no difference if the apprentice himself was bound. Taking it then that the apprentice is well bound, it appears that he served in the day time at *St. Peter's* for two years; but lay every night at *St. Olave's*. There is a distinction between apprentices and servants. As to apprentices the statute is that they gain a settlement by binding and inhabiting, not by binding and service, but servants gain a settlement by hiring and service, without regard to inhabiting. But see *R. v. Graveney*. The case of *St. John* in the *Devises* as cited above seems to me a very odd determination: all the cases I am acquainted with being to the contrary, as *St. Mary Colechurch*,

N.B. See the settlement of apprentices by inhabitation.

church, and *Ratcliffe, Tr.* 3 G. 1. J. 8. apprentice to a sea-faring man, and served in *St. Mary's*, but lay on board a ship in the *Thames* out of the parish; and adjudged he gained no settlement for want of inhabitancy in the same place. The order was affirmed.

279. *R. v. Llanvari Dyffryn Clwyd, T.* 17 & 18 G. 2. *Burr.* S. C. 236. An infant was bound out an apprentice by his father by indenture which was not stamped. It was ruled that the indenture not being stamped could not be given in evidence, being void to all intents and purposes. Indenture not stamped.

280. *Baxter v. Paulam, E.* 19 G. 2. *Wilson* 129. The question was, whether an indenture of apprenticeship, where 6 d. is mentioned to be the sum given with the apprentice, be or be not void for want of being stamped, according to the statute 8 Anne c. 9. s. 32. It was resolved by the whole court, that the statute intended, that when above 50 l. was paid with an apprentice, a twentieth part thereof should be paid for the duty, and one fortieth part when less than 50 l. was paid; and this is a case wherein it is well known that there is no coin small enough to pay the duty in; and it seems by the two stamps of 1 s. 6 d. in the pound, that no sum less than less than 20 s. paid with an apprentice should pay any duty, and this case falls under the saying of *de minimis non curat lex*, and there was no occasion to have this indenture stamped, according to the said statute: 2 *Burr.* S. C. 379. Sixpence only being given with an apprentice.

281. *Pennington v. Sudall H.* 10 G. 3. The plaintiff *Pennington* claimed to be admitted to his freedom of the borough of *Lancaster* by an apprenticeship; and the question was, whether the indentures of apprenticeship ought to have been given in evidence, on which there was a covenant on the part of the plaintiff's father and mother, to provide him meat, drink, washing, lodging and clothes, and the master covenanted, that his executors, &c. will, for the first half of the term, pay to the said apprentice 5 l. per Ann. and for the other half six guineas, in consideration of his faithful service and of the due performance of the covenants: Plaintiff was afterwards assigned, and by the deed of assignment the father and mother covenanted as before, for providing plaintiff with meat, drink, washing, and lodging; and the master covenanted to pay to the father for and towards the maintenance and bringing up of his son, after the rate of 6 l. per ann. These indentures were stamped with a 2 s. 6 d. stamp; Indenture nor assignment had not been stamped, nor any additional duty paid, in respect of the apprentice or his friends finding board and lodging.
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but neither the indentures nor the assignment had ever been stamp'd or any additional duty paid, in respect of the apprentice or his friends finding and providing board and lodging for the apprentice during the term. Mr. *Davenport* argued, that the indentures ought to be admitted in evidence, because the master was not bound to maintain an apprentice with meat and drink, unless the apprentice expressly covenanted for it; for tho' a master is bound to provide a servant with these articles, yet he is not to provide an apprentice, the apprenticeship commencing by covenant, and the apprentice claiming nothing but by virtue of the covenant, which is not the case with a common hired servant, and therefore the master could not be considered as having any thing assign'd to him in respect to his apprentice for the master's benefit, by reason of the father's agreeing to maintain him: That if it could be possibly esteem'd a benefit, it was merely negative, and must arise from calculation. Mr. *Norton, e contra*, contended, That this case was within the 45 *sect.* of 8 of *Ann. c. 9.* which directs that the master shall pay a duty for any benefit which is contracted for by his apprenticeship; that the father's agreement to give the apprentice meat, &c. was a benefit to the master, because it relieved him from a burden which the law would impose on him: That the law would impose such a burden on him must be plain from this consideration; that if a lad was put an apprentice at a great distance from his parents, he could not go to his meals without losing his time, and the advantage of acquiring knowledge in the most advantageous manner, by living with his master at all times in the day; and he said, there can be no difficulty to ascertain the quantum of the benefit the master receives, for the office keeps a person on purpose to estimate such sorts of benefits. Mr. *Wallace* agreed, as the court thought there was some difficulty in the case, to admit the apprentice. Mr. *J. Aston*, There never was an indenture without providing that that the master should covenant to find meat, drink, &c. which is a sufficient argument to prove the obligation of the master, but if there was no such covenant, the law would compel the master to do it. Mr. *J. Willes*, There seems to me to be great nicety in the case. Lord *Mansfield*, I am glad the court is relieved by Mr. *Wallace's* agreement; but here occurs to me a difficulty, upon the face of the deed there appears to be a benefit arising to the master, by the father's providing meat, &c. and

and how can the Judge enter into a discussion to prove, whether the master pays an equivalent to the father for taking a burden off his hands; from this difficulty it should rather seem the duty should be paid. This case came on again in *Hil.* term, and after it was argued, the court directed it to stand over, for the agreement to be fulfilled which Mr. *Wallace* had proposed, by admitting all persons in the same situation as the present plaintiff.

282. *R. v. Badby, E. 12 G. 3.* Case stated that *Simon Rodgrave* the pauper, was the natural son of *Hannah Berley* single woman, and was born in the parish of *Charwelton*, and as appears by the register of *Charwelton*, the pauper was baptized on the 26th March 1733; that *Andrew Rodgrave* was the reputed father of the pauper; that when the pauper was between 5 and 6 years of age, being then at nurse at 2 s. 6 d. a-week, *Andrew Rodgrave* the reputed father, executed an indenture to *Nathaniel Rainbow* stone-mason at *Badby*, in the said covenant, whereby it was agreed, that the pauper was to serve said *Rainbow* from that time until the pauper was 21 years of age, as an apprentice; but that the pauper did not execute the indenture, that the consideration money in such indenture being 5 l. was paid by *Andrew Rodgrave* the reputed father, to the said *Nathaniel Rainbow*. That it appearing to the satisfaction of the court, that the indenture of apprentice could not be produced, parol evidence was admitted of its existence, execution, and contents; that it was not proved whether the duty for such consideration was or was not paid; that the pauper for the two first years was put to school by said *Nathaniel Rainbow*, to read and write, and afterwards for two or three years to learn to spin Jersey, and continued with said *Nathaniel Rainbow* in the said parish of *Badby* 13 years or thereabouts, from the time of executing said indenture, and then he by consent, left his master's service, the indenture remaining uncanceled; that he has not since gained a settlement. The sessions adjudged it to be a settlement, by virtue of the apprenticeship. Mr. *Wallace* shewed cause why the order of sessions should not be quashed, and contended that it was not stated whether the duty was or was not paid: the court ought to presume every thing to make order good; they ought especially at 30 years distance, to presume a legal execution of the indenture and service under it. The sessions did right in not calling for a proof of the payment of the duty, because that ought to have been presumed as well as any thing else.

The sessions state that it was not proved whether stamp duty was paid, but they have not presumed or made an adjudication that it either was, or was not paid. See pl. 276.

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Mr. *Mansfield* on the same side: The sessions presumed very properly that the duty was paid, for if it was not, the parties were guilty of an offence and liable to penalties, which ought never to be presumed; they did presume it as appears by their decision, and then the question is at an end. Mr. *Dunning* *a contra*. The only question is, whether the sessions should have received evidence of an indenture, the stamp duty not being paid; I do not mean to say, that where there is no proof, there is no room for presumption. If they had presumed the stamp duty paid, I could not say that they did amiss; if they had presumed the contrary they might have done right. This is not like the case for presumption, where length of time had worn out the evidence, for they might have applied to the stamp-office and have discovered that the stamp duty was paid. Mr. *J. Aston* interrupted him, saying, it ought to go down again to the sessions; if the sessions had presumed payment, it would have been sufficient. Mr. *J. Willes* and Mr. *Ashurst* being of the same opinion, the order was sent back again to be restated.

Of Apprentices bound out by publick Charity. See *St. 7. Jac. 1.*

283. *R. v. Inhabitants of St. Matthew's Bethnall Green*, *H. 7 G. 3. 2 Burr. S. C. 574.* *John Fell* was bound apprentice by indenture in which the sum of 5*l.* was inserted as paid, and was actually then paid to his master (whom he served the whole time of his apprenticeship in the parish of *St. Botolph without Aldgate*;) out of a voluntary yearly contribution or subscription of divers of the inhabitants of *St. John Wapping*, for the purpose of putting out apprentices, children brought up at the charity-school of the said parish. Four trustees and a treasurer are annually elected to manage the said charity, by whom several children are bound out apprentices every year. The indenture of apprenticeship was not stamped, according to the 8 *Anne. c. 9. s. 39.* The said *John Fell* in the year 1754 hired an house within the parish of *Aldgate*, within the county of the city of *London*, of one *Wallis* for five months during the remainder of a term the said *Wallis* had therein, and for which he agreed to pay *Wallis* the sum of 4*l.* *Fell* came with his family there for five months and a short time over. The sessions adjudged the said house to be at the time of *Fell's* taking it worth

Distinction between publick and private charities.

worth to be let 10 l. by the year. Two questions arose, whether this was a charity binding, and consequently not necessary that the indenture should be stampd; and whether taking for five months paying only 4 l. could be deemed taking a tenement of 10 l. *per ann.* value, when 4 l. for five months is not in the proportion of 10 l. for a year. Lord *Mansfield* declared his opinion, that it was clearly a publick and laudable charity, and that it was not necessary that it should be a permanent charity, that the reason of the distinction between a private and a publick charity is obvious; a private charity might be calculated to evade the act. That the court was precluded from treating this tenement as being under 10 l. *per ann.* value, by the Justices having stated it positively to be of that full value. We are not now upon the evidence of the value. Clearly the rent is not material, it is the value that is material, as was held in the case of *South Sidenham* and *Lamerton*; to which Mr. Justice *Aston* and Mr. Justice *Hewitt* assented.

284. *R. v. Dunsmore*, H. 12 G. 3. The court of King's Bench being of opinion that the order was insufficiently stated, sent it down again; the rule of the court of R. B. was in the following words. It is ordered that the original order of two Justices, and the order of sessions made in confirmation thereof, and filed with the *certiorari* in this cause, be sent back to the sessions; and that the Justices there do hear fresh evidence, and state whether the charity in question is a publick or private charity. The sessions in pursuance of this order received new evidence and returned, That *Catharine Bridgman* by her will, amongst other things gave as follows; *Item*, to *Clifton* 50 l. to be given as my brother thinks fit, some on't to put out children apprentices; that the pauper was put apprentice with part of this money; that the payment of this bequest was charged on the real estate, from which last fact it was suspected that it might be contended, that the bequests were void, as being within the mortmain act; but this question was not agitated: The sessions returned their opinion, that the charity in question is a publick charity. Mr. *Wallace* contended (seemingly against his own opinion) that the sessions had done wrong, in considering it as a publick charity. It is not a charity for putting out all apprentices, but only such a number, and such ones as the brother of the testatrix should in his discretion think fit. Mr. *Dunning*: This is a mighty
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clear case; the sessions have determined it to be a publick charity; I need not argue it, but refer shortly to the opinion of the court in *St. Matthew, Bathnal-green*, which proceeds upon this idea, that publick charities were used in contradistinction to such private charities as might proceed from the benevolence of friends and relations, and to such private charities as might open a door for fraud and evasion of the stamp acts, which cannot be conceived in this case. Mr. J. *Aston*, absent. Lord *Mansfield*. This is not to put particular apprentices, but all in a certain parish; to be sure the brother of Mrs. *Bridgman* must be considered as trustee for the parish. Mr. J. *Willes* and *Ashurst* of same opinion.

Of the Inrollment. See 5 George 3. c. 46.
See also 2 & 3 Ann. c. 6. And 4 Ann.
c. 19.

Not to be inrolled by the Trinity company.
See pl. 292.

285. *Poulson's case*, E. 6 W. & M. 3 Lev. 38. All mariners were incorporated by King *Charles* the second, by the name of the *Trinity* company, with power to take apprentices, according to the statute 5 Eliz. and that their indentures should be inrolled by the *Trinity* company; but the court held that the King could not alter the place of the inrollment, but that it must continue according to the statute. See *Bulf.* 191. 2 *Vern.* 64. *Salk.* 68.

Settlement gained by service under indentures not inrolled.

286. *R. v. Gainsborough*, E. 8 G. 3. 2 Burr. S. C. 586. By indenture dated the first day of June 1756, *C. Myers*, then seventeen years old, the pauper, with the consent of his mother, put himself apprentice to *R. B.* mariner of *West Stockwith* for four years then next ensuing, and was to receive wages increasing every year. The indenture was not inrolled in the town where the apprentice was then inhabiting, nor in the next corporate town to the habitation of the said apprentice, pursuant to the statute 5 Eliz. c. 5. nor with the collector of the customs pursuant to the 2 & 3 Ann. c. 6. He served about three years, and then left his master by consent. He served his master mostly on board at sea, but inhabited in *West Stockwith* the first 14 days, and so many days after, at many different times, as with those 14 days amounted to upwards of forty days in the whole, and in no other parish for forty days during his apprenticeship. The sessions held that he did not thereby gain a settlement in *West Stockwith*. Mr. Solicitor General *Dunning* now shewed cause against quashing

quashing the order of sessions, and insisted that this indenture has not the requisites made necessary by the 5 Eliz. c. 5. s. 4. and that all other indentures are made void to all intents and purposes. Sir *Fletcher Norton*, in support of the rule. I agree that the indenture being for less than seven years was voidable; but not absolutely void. As to the inrolment, the 5 Eliz. c. 5. s. 12. provides, that masters and owners of vessels, &c. may take and keep apprentices to be bound for ten years or under, and every such apprentice being above seven years of age to be bound, &c. so that the same covenant or bond of apprenticeship be made by writing indented, and inrolled in the town where the apprentice shall be then inhabiting, if it be a town corporate, and if the town be not incorporate, then to be inrolled in the next town incorporate to the habitation of every such apprentice, but that provision is intended for the benefit of the apprentice, it is a check upon the master. And therefore the apprentice so bound a minor, to a master of of this sort, shall not be in a worse condition than any other apprentice only because he is bound to a mariner. But there is no such provision in the 5 Eliz. c. 5. as the Solicitor General has cited from the 41 sect. of that act. It is only in 5 Eliz. c. 4. and not in 5 Eliz. c. 5. upon which latter act this case depends. Lord *Mansfield*: Then the Justices have done wrong. It would be very hard that the apprentice should suffer for his master's neglect. I think the cases have gone too far upon the stamp act, it is *summum jus*; and has been considered strictly on account of the preservation of the duties payable to the crown. Let the rule be made absolute for quashing the order of sessions.

Jurisdiction of the Justices and Sessions.

287. *Watkins v. Edwards*, T. 29 Ch. 2. 1 Mod. 286. Action of covenant brought by an infant by his guardian, for that the plaintiff being bound apprentice to the defendant by indenture, &c. The defendant did not keep, maintain, educate, and teach him in the trade of a draper as he ought, but turned him away. The defendant pleads, that he was a citizen and freeman of *Bristol*, and that at the general sessions of the peace, there was an order that he should be discharged of the plaintiff for his disorderly living, and beating his master

and mistress, and that this order was inrolled by the clerk of the peace as it ought to be, &c. To which the plaintiff demurred. It was said for the plaintiff, that the statute of 5 *Eliz. c. 4.* doth not give the Justices, &c. any power to discharge a master from his apprentice, in case the fault be in the apprentice, but only to minister due correction and punishment to him. *Per Cur.* That hath been over-ruled here. The Justices, &c. have the same power of discharging upon complaint of the master, as upon complaint of the apprentice; else that master would be in a most ill case that were troubled with a bad apprentice, for he could by no means get rid of him. 2dly, It was urged on the plaintiff's behalf, that he had not for ought that appears, any notice or summons to come and make his defence. 11 *Co. 99 Bagg's* case, and this very Statute speaks of the appearance of the party, and the hearing the matter before the Justices, &c. *Saunders pro defendente*: In this case the Justices are Judges, and it being pleaded that such a judgment was given, that is enough, and it shall be intended all was regular. *Twisden and Ratbessford*: That which we doubt is, whether the defendant ought not to have gone to one Justice, &c. First, as the statute directs, that he might take order and direction in it, and then if he could not compound and agree, he might have applied himself to the sessions; for the statute intended there should be, if possible, a composition in private, and the power of the sessions is conditional, viz. If the one Justice cannot end it: In case of a bastard child, they cannot go to the sessions *per saltum*, and we doubt they cannot in this case: It is a new case, and the matter will be, whether this ought to be set down in the pleading. *Adjournatur.*

See pl. 293.

Apprentices cannot be discharged at a private sessions.

288. *Anonymous, H. 35 Ch. 2. Skinner 98.* Four Justices at a private sessions had discharged an apprentice, and afterwards at a general sessions, the Justices set that order aside; and the court held, that an apprentice could not be discharged but at general sessions.

It is not necessary to state the order of discharge upon a certiorari.

289. *Anonymous, M. 7 W. 2 Salk. 470.* The statute requires that the discharge of an apprentice should be under the hands and seals of four Justices; but in a *certiorari*, to remove the order: it is sufficient in the return to take notice of the order so made, for it is not necessary to certify the discharge itself.

pl. 349.

290. *R. v. Gately, M. 7 W. 2 Salk. 471. and Carth. 198.* *Grien* was bound by indenture in this manner to *Gately* a surgeon, "to learn the trade he now useth." Upon complaint

Complaint of *Green*, that his master (who was a mountebank) did not instruct him in his art of surgery, but made him learn to dance upon the rope, &c. the sessions discharged him. Exception was taken to the order, that by it the servant was discharged from his master, whereas the discharge should have been mutual. 2dly, Because the statute 5 *Eliz.* with regard to discharging apprentices extends only to apprentices mentioned in that clause; and though a surgeon may be a trade within the statute, so far as that a man cannot execute it without serving an apprenticeship to it, because that clause of the statute is general, yet this part of the statute relating to the discharge of apprentices extends only to trades there mentioned. 3dly, The order not under the seals of the Justices, which is expressly required by the statute. *Per Cur.* As to the first exception, the discharge of the servant is the discharge of the master. The other exceptions are all material.

Three exceptions that the discharge was not mutual nor under the seals of four Justices, and that the master was a surgeon.

See pl 236, and 244.

291. *Hawkefworth and Hillary. M. 21 Ch. 2. Saund.* 315. An order was made at the sessions for the city of *York*, discharging *Hawkefworth* on account of several misdemeanors committed by him in his apprenticeship from his master *Hillary*, and the order states, that this master refused to entertain him any longer, and orders the said apprentice should be discharged from his apprenticeship, and that his master should restore to him 60*l.* part of the 100*l.* which he acknowledged he had received with him, and that this be a final order, &c. and the apprentice committed till he find good security for his good behaviour. It was objected, that the sessions had exercised an authority not warranted by the stat. 5 *Eliz.* which it was said gave the magistracy only authority to punish, not to discharge an apprentice. But it was the opinion of the whole court, that an apprentice may be discharged from a bad master, and a bad apprentice discharged from his master, and the clause which gives power to punish a bad apprentice does not restrain but enlarge the power of magistrates (over apprentices) beyond the power given them over the masters, and that the magistrates may inflict corporal punishment, or discharge an apprentice at their discretion.

Sessions discharge an apprentice and order part of the money to be returned by the master, and that the apprentice be committed till he find security for his good behaviour.

292. *R. v. Johnson, T. 13 W. 21 Salk. 68.* An apprentice was discharged by an original order made at the sessions, without any previous application to a Justice of the Peace, to endeavour to compromise the matter as the statute directs. After several debates, the court declared, that if it had been *res integra*, they should have held a

Sessions have original authority to discharge apprentices.

previous application to a Justice necessary; but as so many original orders made at sessions had been confirmed here, it was too late to call the matter in question. And as to the second objection that the Justices had ordered money to be returned, that was held to be a power consequential upon their jurisdiction to discharge.

Sessions of the county where the master lives have jurisdiction, and mentioned in the statute of Eliz.

293. *R. v. Collingburne*, M. 12 G. 1. *Stran.* 663. An order of sessions was made at *Hicks's hall* for the discharge of an apprentice to a freeman of the city of *London*, and who was bound and inrolled there, and then went and lived with his master in the county of *Middlesex*. To this order three exceptions were taken, 1st. That the apprentice was bound and inrolled in *London*; 2dly, Not bound by the Justices, nor 3dly, To a trade within the statute, that of a glazier. To these exceptions it was answered, that by the statute of *Eliz.* if any master misuses his apprentice, he shall repair to one Justice of Peace where he dwelleth, and s. 40. provides that the customs of *London* and *Norwich* shall be saved; the act then does not regard where the binding or inrolling is; but gives the jurisdiction expressly to the Justices of Peace where the master lives; and if this does not belong to the Justices of *Middlesex* there would be a failure of Justice; for neither the Chamberlain, nor any other city magistrate, has power to compel the master's appearance before them. To the second exception it was answered, that it was immaterial where the apprentice was bound, for the same reason; and to the third, that it was settled otherwise. *R. v. Taunton*, H. 6 G.

See Salk. 69.
1 Saund. 114.
1 Mod. 387.

Summons.

Not absolutely necessary that the master should be present.

See pl. 286.

294. *Ditton's case*, E. 1 W. 3. 2 Salk. 491. Exception to an order of sessions for the discharge of an apprentice, that *Ditton* the master was bound over but did not appear, and it is expressly directed by the act, that the discharge is to be made on the appearance of the master; besides there is another remedy, to proceed on the recognizance which is forfeited by non-appearance. *Per Cur.* The act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy; otherwise if the master runs away the apprentice can never be discharged. V. 1 Mod. 2. & 5 Mod. 339. & Salk. 68.

Apprentices.

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295. *Rex v. Gill*, H. 5. G. Str. 143. *Per Cur.* It has been so often resolved that the sessions has an original jurisdiction to discharge apprentices, that we will not suffer it now to be questioned, though it might be doubtful upon the statute itself; but in these orders it must be set forth, that the master appeared or was summoned, as was held *E. 10 Anne R. v. Rutter*. And for want of this the order was quashed.

It must appear
that the master
was summoned.

Causes of Discharge.

296. Non payment of wages, or insufficiency of meat and drink, are good causes of departure, or if the wife of the master beats the servant. *Brooks Abr. Tit. Lab. pl. 51.*

297. *Hobart's Rep.* 134. The Ch. J. said, generally no man can force his apprentice to go out of the kingdom, except it be so expressly agreed, or that the nature of his apprenticeship doth import it, as if he be bound apprentice to a merchant adventurer, or a sailor, or the like.

Apprentice cannot be compelled to go out of the kingdom.

298. *R. v. Keller*, E. 35 Ch. 2. 2 Show. 282. Information brought against a man for beating his apprentice, and defendant was convicted.

299. *Anonymous*, T. 35 Car. 2. Skin. 114. A poor boy who had been put out apprentice by the Justices, after three years service, plainly appeared to be an idiot incapable of learning his trade. Hereupon his master was discharged of him, and he was sent back to his parish by an order of sessions. *Per Cur.* This a good order. It would be hard upon the master to keep one who could do him no service, while the parish should go free.

Apprentice appearing to be an idiot may be discharged.
See Brownl. 67.
Hob 134.
See pl. 301.

300. *Woodroffe v. Farnham*, T. 6 W. & M. 2 Vern. 301. *Per Cur.* By the custom of London a master can justify turning away his apprentice for frequenting gaming houses, and may justify it before the chamberlain.

Gaming.

301. *Stephenson v. Holditch*, 2 Vern. 491. An apprentice in London had married without the privity of his master, yet that would not justify his master in turning him off, but must sue his covenant.

Marriage.

302. *R. v. Haleswoen*, T. 4 G. Str. 99. The sessions reciting that J. H. was bound out by indenture as the statute requires to J. P. and being lame, having the king's evil, and in the opinion of surgeons incurable; therefore the sessions discharge the master from his apprentice. Darnell Serjeant moved to quash it, because the master cannot now have the end for which he took the apprentice, which was the service of the apprentice.

Apprentice afflicted incurably with the king's evil.

confirm

Both

Willes replied, that the statute only enables to discharge for misbehaviour, not sickness, that besides the order of discharge was not inrolled, neither is it mentioned that one of the Justices is of the quorum. ~~But~~ exceptions to the form were held good; but the court quashed the order as to the substance, for the master takes him for better or worse, and is to provide for him in sickness and in health.

303. *R. v. Davis*, T. 12 G. Str. 704. Order of sessions for discharging an apprentice, the only reason given for which discharge being, that the master in open court declared that he would not take him again, was quashed.

Sessions have original jurisdiction in discharging apprentices. It must appear that the party appeared.

304. *Heafeman*, E. 8 G. 2. Cases Temp. *Hardwicke* Ch. J. 101. First exception to an order of sessions, for discharging an apprentice, that this is an original application to the sessions, whereas they have not an original jurisdiction, 2dly, That if the sessions have an original jurisdiction, yet it is limited, upon the appearance of the master, or some default made by him, which ought to be shewn in the order, and nothing of that appears on this order. 3dly, That the jurisdiction is not rightly exercised, for the reason they give is for unkind usage from the master; and though the order says farther, that the master refuses to continue him in his service, or to entertain him according to the indentures, that will not make it better; as in *R. v. Davis*, Str. 704. an order stated that the master declared he would not take his apprentice, and held to be no sufficient reason. Lord *Hardwicke*: The latter cases have been, that the sessions have an original jurisdiction, though it were to be wished that justices out of sessions had prior jurisdiction as being less expensive; but the application which the 5 Eliz. c. 4. s. 35. directs to be made to a private Justice seems to mean only to arbitrate, and accommodate the dispute. The statute says if he cannot compound the matter, he is to take bond for the parties appearance at the sessions, so that they are not to take it up by appeal. The second objection I think is not to be got over. In cases of convictions appearance has always been held necessary, but in cases of orders in general the court will presume *omnia rite esse acta*, and that distinction between orders and convictions was confirmed in the case of *R. v. Loyd*, Str. 296. But then that presumption is only in the case of orders upon the statute which do not in express terms require an appearance, but now we are upon an act which gives the justices authority to proceed upon the appearance of the party, so that it is made an essential requisite

The master's using the apprentice unkindly, and refusing to take him again, are not sufficient reasons for discharging him.

requisite by the act to found their jurisdiction. As to the third exception, in general, it is not necessary to set out the reason of their judgment, but here the act requires it, and it is rightly said that using unkindly is not such misusing as is intended by the act, and if the following reason, his refusing to let him continue in his service, is to be understood of an absolute refusal to let him continue with him, and not only as a refusal to entertain according to his articles, that neither will be a ground for this order, because the justices have a power to compel the master to take him again, as was done in the case of *Davis*. However this is more doubtful; but on the second exception the order must be quashed. *Str.* 1014.

What shall have the Effect of a Discharge.

305. *M. 2 An. 6. Mod. 69.* On action of covenant *if a master gives* against an apprentice for leaving his service, *Holt Chief Justice* held these two points; 1st, That if a master does licence an apprentice to leave him, he cannot after recal that licence. 2dly, That if a master bring covenant for leaving his service at such a time, and defendant justifies by virtue of a licence at that time, the master cannot upon that declaration give evidence of a leaving him at another time, for there the time is material, and it is not like a transitory matter in trespass.

306. *Case of the Parish of Thursley in Surrey, T. 3 Ann. b. Mod.* The son was bound an apprentice to his father, who gave up the indenture to the son, and bound him out to service for a year in another parish, where he served, but did not cancel the indenture, and becoming poor, the Justices held him settled in the parish where the father lived, because the indenture being still in force, his apprenticeship continued. And though it was agreed that an accord with satisfaction would be a good discharge of this covenant; and though it was urged that here was that which in its nature amounts to a satisfaction to the father, for now he is discharged of the obligation of providing for his son as an apprentice; yet the court held that the indenture not being cancelled, the obligation of the apprentice continues; and that if the father should get the indenture into his hands again uncanceled, and sued the son thereupon, the aforesaid agreement would not be a good plea for the son. And

Powell

Exchanging the indentures is equivalent to cancelling them, and if afterwards the apprentice hires himself to work for a second master, it shall not be considered as serving the original master.

Pouall remembered the case in the book of *H. 7.* where one was bound by bond, and the obligee delivered it to the obligor, who committing to cancel it, the obligee into whose possession it afterwards came put it in suit; and all this was pleaded specially, and adjudged *no plea.*

307. *R. v. Inhabitants of St. Mary Kalendar, T. 21 & 22 G. 2. Burr. S. C. 374.* *J. M.* the pauper was twenty-six years ago bound apprentice for seven years to *J. G.* of *St. Michael's* parish, and served there accordingly for five years; and then left his said master, and the indentures were exchanged between the master and the apprentice's father by consent of the apprentice; about one year afterwards, the father of the said *J. M.* contracted with *W. S.* of *Twysford* for binding the said *J. M.* apprentice to him for four years, and in consequence of that agreement *J. M.* went to *W. S.* on trial, and lived with him a year and three quarters in *Twysford.* But no indentures were executed, nor other agreement made. While the pauper lived with *W. S.* his former master lived within four miles of *Twysford,* and knew of his being in the service of the said *W. S.* But no other proof was made that *J. G.* consented to the said agreement between the pauper's father and *W. S.* In support of a motion to quash the order of sessions, it was urged that the settlement of the pauper is in *St. Michael's. Ld. Ch. J. Lee:* There can be no ground to consider this as a settlement at *Twysford,* but upon the supposition that the first indentures subsisted, and that the service at *Twysford* was under them. But the exchange of the indentures certainly, in law or equity, which are the same in this case, amounted to a cancelling of them, and a determination of the apprenticeship under them. Besides here is no consent of the original master, but the contrary is evident, for his knowledge of the fact does not imply his consent to the transaction. The apprentice living at *Twysford* was not under but contrary to the first indenture; it was in consequence of a fresh agreement and for a new term. By the court, the order must be quashed.

Apprentice being an infant cannot consent to his own discharge.

308. *R. v. Austerly, H. 31 G. 2. 2 Burr. S. C. 441.* An apprentice, who was bound out by the parish till he should attain the age of twenty-four years, was by a formal agreement between his master and himself discharged from his apprenticeship, and the indentures delivered up; the apprentice being then under twenty-one years of age, he then was regularly hired by a third person in *Austerly* and served for a year. *Lord Mansfield:* Being

Being under age his consent was out of the case, and is exactly upon the same foot as if he had given no consent. His subsequent services then, under the hirings stated in the order, cannot be considered as performed by the master's leave and consent, and so being a service of his master under the indenture, because this is no express leave and consent of the master to the particular service, but was intended to be quite general, and was even founded on a mistaken apprehension, that the apprentice could consent to his being discharged, which being an infant he could not do. Order was quashed.

309. *R. v. Inhabitants of St. Luke's, T. 5 G. 3. 2 Burr. S. C. 542.* *W. H.* at fifteen years of age was bound apprentice by the parish till he should attain the age of twenty-four, he served the first three years in *Southwark*, then removed with his master one *Frost* to the parish of *St. Luke* in *Middlesex*, and served there four years, his master then told him to go about his business, and work for himself; no one was present at their parting, and the indentures were not cancelled or delivered up. *W. H.* hired himself to different masters of the same trade in different parishes, and believes that *Frost* did not know who he worked with, nor was he ever called upon by *Frost* to account with him for the money which he earned, but applied it to his own use; nor did he ever inquire after *W. H.* as far as he knows, or make any provision for him. He worked and lodged the last forty days before he attained the age of twenty-four years in *St. Leonard's Shoreditch*. The sessions were of opinion he did not gain a settlement in *St. Leonard's*. Lord *Mansfield*. The indenture of apprenticeship remained in force; this service in *St. Leonard's* cannot be considered as service of his first master, or as an assignment. Mr. *J. Wilmot*: What had passed was a total dissolution of the apprenticeship, as to this particular purpose of gaining a settlement under the indenture. This working in *St. Leonard's* was not carrying on the business of the first master there, or serving under the original apprenticeship in this parish of *St. Leonard's*. Mr. *J. Yates*: He could not gain a settlement by serving under a contract which he was not *sui juris* to make; and Mr. *J. Aston* concurring, the order was affirmed.

If the indentures are neither cancelled nor given up, and the apprentice works with a second master without the privity of his original master; he does not gain a settlement.

310. *R. v. Norton, M. 9 G. 3. Benjamin Watson*, the pauper, when an infant, was bound apprentice by the officers of *South Henley* to *Hannah Cuttle*, of that place, who occupied a farm in that township, till he should attain

See *Whitchurch Canoncorum*.

tain the age of twenty-four years. After he had served about six years, she quitted the farm to her son, with whom the apprentice had lived several years. Being desirous to leave the said service he applied to his master, who told him he might go where he pleased. He thereupon left his master, and hired himself to *J. Walker of Ardesly* for a year, but did not continue in that or any other service for twelve months, though he was hired to several other places. He never accounted either with *Hannah Cuttle* or her son, for any wages he received in any of these services. In *May 1766 Cuttle* the son delivered up his indentures to the pauper, and in *February 1767* he hired himself to *John Baildon*, of *Notton*, to whom he was recommended by one *R. D.* who afterwards told *Cuttle* the son what he had done, upon which he replied, that he thought *Baildon's* a good place for him; in which he continued till *August* following. The pauper attained his age of twenty-four years in *May 1767*. The sessions held, that he gained a settlement under this service at *Notton*. *Mr. Fearnley* cited the case of *R. v. St. Luke's Middlesex*, which the court said was in point, and made the rule for quashing the order absolute.

See pl. 308.

Returning the Money, &c.

Justices (in sessions) may order part of the money to be returned, when the apprentice is in fault.

See pl. 290.

311. *Du Hamel's Case*, 35 *Ch. 2. Skinner* 108. An apprentice to *Du Hamel*, upon complaint to the sessions was discharged by their order for default of the Master, who was ordered to restore part of the money, and deliver up the indentures. *Saunders Ch. J.* said, That the Justices having authority to discharge the apprentice by the 5 of *Eliz.* it was a power incident to their authority to order part of the money to be returned, and the indentures to be delivered up, and he cited a case where part of the money was returned, though the apprentice was discharged for his own fault.

It was held that an order on the master to return money is good, tho' it be not averred that he had any with the apprentice, for the order being to return money is as necessarily a proof of the receipt of it as if it had been expressly alleged; and in this case (*R. v. Amis*, 7 *G. 2.*) the court, seemed to be of opinion, that though the Justices had power to discharge, and to oblige the master to refund as well in other trades as those mentioned in the statute, that

that they are not obliged to set forth in their orders all the steps they take in their proceedings. And it hath been resolved that the Justices may discharge a merchant's apprentice, (which hath been held to be a trade not within the statute), and may oblige the master to refund part of the money which he had with him. 3 *Bac. Abr.* 550.

To return the money given with the apprentice.

Claim of and upon Executors, &c.

312. *Wadsworth v. Executors of Guy, M.* 16 Ch. 2. 1 *Keb.* 820. & 1 *Sid.* 216. In an action brought upon a covenant to instruct an apprentice, or cause him to be instructed in the trade of a sadler, and to find him in meat, drink, and lodging, during the term, the plaintiff sheweth the testator's death, and that such a day he was turned out of doors by the defendant, *et sic conventionem fregit in hoc, viz.* not instructing him and not finding meat and drink: To which the defendant demurreth; because that is a personal covenant and discharged by death, and cannot be assigned; as *Hob.* 124, & 116. & 48 *Ed.* 3, 2. being no custom. But all the court inclined to the opinion that if it had been only to instruct, it had been discharged, and being complex to instruct and find meat it is not; and if it were, yet the breach is sufficiently assigned, if either part be true as here, in turning him out. Judgment for the plaintiff.

313. *Barber v. Dennis, Salk.* 68. A waterman's widow took an apprentice, who went to sea and earned two tickets, which came to the defendant's hands. The widow brought trover for them and had judgment. For what an apprentice gains is for his master, and whether he is legally apprentice is not material; it is enough if he be so *de facto*.

What an apprentice earns is the property of his master.

314. *R. v. Pitt, T. 4 W. & M. Shower* 405. A pauper was put out an apprentice to *Browning*, who dies. Administration is committed to the defendant: The apprentice falling sick, and becoming chargeable to the parish, the Justices make an order on the defendant to receive and provide for him; which order is confirmed at the sessions. Sir *B. Shower* now moved to quash these orders, for that the jurisdiction of the Justices is only over the person of the master, and does not extend to his executors and administrators; that such a construction, would produce infinite confusion in the law, for suppose no assets, shall the Justices try that? Shall this expence and charge be pleadable to any, and what suit by creditors?

Executors and administrators are not obliged to provide for an apprentice.

tors? If the administrator live in another parish or county, must the apprentice be sent after him? Then if he proves poor himself, the parish where he lives must be burthened with the apprenticed. If there be covenants in the indenture which reach the executors, those may be saved, and then we have liberty to plead it, but at present by this order we are settled, &c. *Per Cur.* The order must be quashed.

Order that apprentice should serve his master's widow's second husband not good.

315. *R. v. Chaplin, E. 7 W. Comb. 224.* Justices made an order that an apprentice whose master was dead, should serve the remainder of his time with his master's widow's second husband. The order was quashed; for the Justices have not power to turn over an apprentice, and his applying to them, could not give them jurisdiction. See *Comb. 339.*

Widow without taking out administration assigns the apprentice.

316. *R. v. East Bridgeford, T. 13 G. 2 Burr. S. C. 133.* *Thomas Alt*, the pauper, was bound apprentice by indentures dated 25th May 1727, to *W. H. of Orston Webster* for nine years, and served him the first four years of the said term at *Orston*: and the said *W. H.* then dying intestate and insolvent, his widow (without any administration taken that appears to this court) assigned him over to *Edward George of Staunton Webster*, a certificate man, for the remainder of the said term, in consideration of 3 *l.* paid her by *George*, and pursuant thereto the said *Thomas Alt* lived with, and served the said *George* about a year and a half at *Staunton*, and then the said *George* in consideration of 40 *s.* paid him by *Thomas Baggaly of East-bridgeford* the aforesaid *George* did, with the consent of the said *Thomas Alt* assign over the said *Alt*, by verbal agreement, to the said *Thomas Baggaly* for the remainder of the said term of nine years; and accordingly the said *Thomas Alt* lived, and served out the remainder of the said term, with the same *T. Baggaly* at *East-bridgeford*. But it not appearing to the sessions that the said *Henson's* widow was at the time of the second assignment, party or privy thereto; but about seven or eight months after she was acquainted therewith, and very well approved it. And the court [of sessions] being of opinion, "That the said *Thomas Alt*, by virtue of "the said assignment and service at *East-bridgeford*, "gained a settlement in *East-bridgeford*." It is therefore ordered by the court, that the said order or warrant of removal be, and the same is accordingly confirmed upon the said parish of *East-bridgeford*. The objection to this order was, That the widow of the deceased mas-

ter had no legal interest in his apprentice, she had not taken out any letters of administration, nor had any kind of authority to make such assignment, and consequently the second assignment of him made by her assignee is totally invalid and nugatory. Upon shewing the cause it was said, that though the widow did not take out formal letters of administration, yet she appears to have been executor *de son tort*, and executor *de son tort* may do legal acts, and an apprentice may gain a settlement under assignment even by parol only. 1 *Salk.* 68. *Caster and Aides*; and *P. 3 G. 2. B. R. R. v. Barnes*. Moreover this apprentice must be either under the power of the executor *de son tort*, or be *sui juris*. Now if the former, the assignment is good; if the latter, then an agreement by a person *sui juris* to serve for three years and a half, will bind him, which the court allowed; and observed, that tho' an assignment of an apprentice is not a strictly legal transaction because the person of a man is not strictly and legally assignable, yet it has been an equitable construction, that where an apprentice has lived 40 days under an assignment, he shall thereby gain a settlement because of the consent.

317. *Baxter v. Burfield*, E. 20 G. 2. MSS. 20 Debt upon bond for performance of indentures of apprenticeship; plea condition performed. Breach assigned that the defendant being put apprentice to plaintiff's husband who was dead, he refused to serve his executrix. The plaintiff who by a protestation in the replication was alledged to carry on the same business of a mariner by herself and servants. Demurrer and joinder. This having been twice argued, Lee Ch. J. now gave the opinion of the court, that the executrix could not maintain this action; for, 1st. It appears by words of covenant, it was only to serve with the master, and no mention of *executors or administrators*. 2. From the nature of the covenant, for covenant between master and apprentice implies, he shall only serve the master, for he is the only person he is bound to. And so is determined in the case of *Coventry and Woodbally*, *Hob.* 134. And tho' it is said, a master has an interest in his apprentice, yet it is not such a one as a person has in lands or chattles which is transferable, but is an interest coupled with a personal trust, annexed to the person of the master, which cannot be assigned and is gone by his death, like the case of a guardian. *Vaugh.* 183. 3 *Keb.* 519. 3. Another reason why the apprentice is not bound to serve the executrix is, because the covenant to instruct is personal and dies with

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Apprentice not bound to serve the executrix of his late master.

the master, and cannot extend to the executors, who may not be capable of instructing. 1 *Keb.* 820. 1 *Sid.* 216. The interest the master has in his apprentice, is a right to his service only. The case of *Hall and Walker*, in 1 *Lev.* Apprentices how far assignable is a single case, and certainly is not law; as appears by 1 *Salk.* 68. And there was afterwards another case in this court of *Herns and Drake*, *Hil.* 8 *Ann.* Debt on bond to stand to award that an apprentice should be assigned, the award was held bad, for the indenture of the apprentice is not assignable by law or equity unless it be by custom, and then by the master during his life, and even then by the consent of the apprentice. If therefore a master cannot assign during his life, because his indenture is fiduciary, it is absurd to say he shall do it by his death. There is a great difference between a covenant to maintain and to instruct, for the first is a lien upon the executor, tho' not named in right of the testator's assets being come to his hands. But the other is a fiduciary trust, annexed to the person of the master. 1 *Eliz.* 553. In office of executor it is said, apprenticeship is gone by the death of the master; and that he is not bound to serve the heir or executor. We therefore are of opinion, upon the whole, that the covenant to serve is confined to *Baxter* only, as there is no mention of his executors or administrators; and that the interest in the apprentice is a mere personal trust, not assignable in the life of the master, either in law or equity, except by custom and with consent of the apprentice, and if not assignable in his life, is not transmissible to his executors; and therefore plaintiff cannot maintain her action. Judgment for defendant.

A. was bound apprentice to B. whose landlord C. had covenanted to indemnify him from all parish charges, and received the apprentice and the indenture from him. After some time A. was sent to work with his mother with assent of C. but the representatives of B. were not consulted.

318. *R. v. Clapham*, *E.* 20 *G.* 2. *Burr.* S. C. 296. *M. W.* was bound apprentice by the parish to *T. J.* of *Austwick*, who was tenant to the Rev. Mr. *Jackson* of *Clapham*, who had covenanted to indemnify his tenant against all parish charges. *T. J.* carried the apprentice to his landlord, together with the indenture, who accepted, received and provided for him. Mr. *Jackson* desired the mother to provide for the boy, and did so for three years in *Austwick*, for which Mr. *Jackson* paid her twenty shillings each year. He then lived with Mr. *Jackson* in *Clapham* eight weeks, and then ran away to his mother, and remained a quarter of a year in *Austwick*, and Mr. *Jackson* consented to his being there. Then the boy was placed with his brother, a mason in *Austwick*, as an apprentice. Mr. *Jackson* gave him a new suit of clothes.

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He served his brother as an apprentice a year or two in *Austwick*, who took him as an apprentice, and quitted *Mr. Jackson* of him, but the representatives of the first master who was then dead knew nothing of this, nor ever assented to it, nor knew of his living with his mother. *Ld. Ch. J. Lee*: Here is a binding by indenture, (though the term is not stated) which is delivered with the apprentice by his mother to his landlord, and is received by him. He must be looked upon, as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living with *Mr. Jackson* at *Clapham*, the settlement had been there. But a settlement is fixed at *Austwick* by the boy's living there a quarter of a year, with the consent of his master; for this is living there under the original binding as no dissent of the first master is stated. Then the agreement with the mason is not stated to be a new binding: The first master delivered over all his right, and the indenture to *Mr. Jackson*, and it is not necessary to state any assent from him. The case of *East-bridgesford* is in point. There is no ground for the distinction that a second master cannot assign to a third, so far as that a settlement may be gained by a service under it. *Mr. J. Denison* concurred, that the service to the mason was a service under the original binding, and that no actual consent of the first master was necessary. This has been called a new binding to the mason, but neither could a new contract be made while the former subsisted, nor does such a thing seem to be intended: Therefore this is a service under the first binding. *Mr. J. Foster*: It is not stated expressly that the pauper served his brother as a mason under the indenture. The order was quashed.

Second master may assign to a third.

to 319. *R. v. Bakring*, *E.* 26 *G.* 2. *Burr.* S. C. 320. The pauper was bound apprentice in *Bakring* by parish indentures, till he should be twenty years of age: About three years before that time he ran away from his master, who died in *June* 1749: At the following year he hired himself as a servant, and served for a year at *Salfon*. At *Martinmas* 1750, he hired himself for another year, and served that year also at *Salfon*, and received all his wages for his own use; the executors of his first master taking no notice of him. He did not attain his age of twenty years till *January* 1750. *Mr. Taylor White* moved to quash the order of sessions, upon the authority of *R. v. Puck*, 1 *Salk.* 66. in which *Byr* *Ch. J.* said, that apprenticeship is a personal trust between the master and

Master dying the apprenticeship is at end.

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servant,

servant, and is determined by the death of either; and this case was allowed to be authority by the court. Exception was then taken to the original order, that having mentioned the parish of *Eakring*, it goes on that he has lately intruded himself into your town of *Eakring*, so that it is uncertain whether *Eakring* be a town or parish, and secondly that it alledged in the order, that the pauper is likely to become chargeable there, whereas it should be to the parish. But both the objections were over-ruled, 2 *Vent.* 31.

Assignment of Apprentices.

Executors assign an apprentice who writes his name upon the indenture of assignment, yet the assignment was held not valid.

320. *R. v. Channel*, T. 27 Ch. 2. 3 *Keb.* 519. He was indicted at *Westminster* sessions 13 July 1675, for departing from his service, being bound an apprentice, and superinde assigned to *Thomson* the prosecutor. The case was that the defendant was bound apprentice to *A.* who died, and the executors of *A.* by indenture assigned the defendant to *Thomson* for residue of term in three years; to which the defendant agreed by writing his name and assent upon the indenture of assignment, and if by all this he were such an apprentice as by 5 *Eliz.* c. 4. f. 9. were indictable for his departure from *Thomson* was the question. *Creamer* for the defendant urged, 1st. That this is an interest and so was well assignable over by the executor of *A.* as before bound by the statute of 43 *Eliz.* c. 2. f. 5. executors are chargeable. But 2d This is a new binding by the defendant's assent to the indenture of assignment, though infant and no party to indenture, against which it was said, that though this be an interest, yet it is gone by the party's death, as of a servant hired for a year, he is not bound to serve the executors of the master. And though by 45 *Eliz.* c. 2. Executors should in point of charge be liable, yet not in point of contract, to instruct apprentice in trade as the master is, and by the common law infant was not bound to serve; but by 5 *Eliz.* c. 4. f. 43. if he be bound by indenture he is compellable to serve, which being an abridgment of the common law is *stricti juris*; but were it never so favourably taken, this bare assent by indorsement will not amount to a binding by indenture being not party; and so there being no special custom, as in *London*, alledged for the turning over, the defendant is no apprentice and consequently may depart, which the

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the court agreed; and not proving the first indenture, the defendant was discharged.

321. *Caistor and Acle, M. 13 W. 3. Ld. Raym. 683.* How far an apprentice is assignable. *p. 701*
A poor child was bound to a master at *Caistor*, who assigned him to another master who lived at *Acle*; judged to gain a settlement at *Acle*; for though an apprentice is not properly assignable, yet that assignment is not merely and absolutely void, but amounts to a contract between the two masters, that the child shall serve the latter, so that it is good by way of a covenant, but not as an assignment to pass his interest, like the case of assigning a bond; though it be not assignable in point of interest, yet it is a covenant if the assignee shall receive the money to his own use; by this agreement the apprentice serves the time with the second master and thereby gains a settlement. *Note.* The binding in the apprenticeship was in 1686, and the assignment in 1688; before the 3 & 4 W. & M. But the Ch. J. did not regard the time in the delivering the resolution of the court. *Salk. 68.*

322. *R. v. Barnes, E. 3 G. Str. 48.* *A.* is bound out by the Justices to *B.* who assigns him to *C.* and the sessions reciting the special matter adjudge the assignment void, and order him to be returned to *B.* *Per Cur.* The sessions had no power to judge of the validity of a deed, or to hinder a man from assigning his apprentice. The covenant to provide for him is well performed, if the person to whom he is bound out by Justices assigns him to another to provide for him; and apprentices bound out by two Justices may be assigned as well as others. *Order quashed.* Session cannot prevent a person's assignment.

323. *Parishes of Holy Trinity and Shoreditch, M. 3 G. Str. 10. Parker Ch. J.* delivered the resolution of the court. This is an order for the removal of *F.* from the parish of the *Holy Trinity* to *Shoreditch*, by which it appears that *F.* was bound an apprentice to one *Truby*, with intent that he should serve *Green*, which he did for three years, and it has been insisted that he being bound to *Truby*, who lives in *Trinity* parish, his settlement is there, and not in *Shoreditch* where the service was. But we are of opinion that the Justices have done right in sending him to *Shoreditch* where the service actually was. It is the same thing as if *Truby* had turned him over to *Green*, in which case there could have been no doubt, that he had gained a settlement in *Green's* parish. If the master removes out of one parish into another, the apprentice gains a settlement, if he lives there forty days. The turning over an apprentice is like assigning a deed; in this case *Truby* was only a trustee. There is a great

deal of difference between apprentices and other servants, for apprentices are not presumed to become chargeable, because the trade and mystery they learn is their estate. *Salk.* 68.

Apprentice, sent by his master by a verbal agreement to serve another person, gains a settlement.

324. *R. v. Parish of All-Hallows, T. 9 G. Cases of Law and Equity* 169. The pauper was bound apprentice in the parish of *St. Olave*, and having served two years in that parish, was by a verbal agreement between one *Dennis* and his master sent to serve *Dennis* in the parish of *All-Hallows*, and there he served him five years. The sessions held him settled at *All-Hallows*. *Per Cur.* This very point was determined in *M. 3 G.* between the parishes of *St. Leonard's Shoreditch* and *Trinity* parish. An apprentice bound to a master living in one parish, and serving some part of his apprenticeship there, was by a verbal agreement made between his master and another to serve his time out in another parish; and this was adjudged a good settlement in that other parish where he last served; for it shall be still intended that he served his first master upon that agreement, and that it was but a continuance of his apprenticeship; and so it was adjudged in the principal case.

Apprentice of a bankrupt hiring himself without his master's assent does not gain a settlement.

325. *R. v. Buckingham, E. 10 G. Ld. Raym.* 1353. The fact stated in an order of sessions was, that *R. A.* was bound apprentice to *J. S.* in *Buckington*, and served him in that parish six months; afterwards *J. S.* broke, upon which *R. A.* without his master's direction or consent, let himself as a servant to *J. N.* who lived in *St. Michael's Sebington*, and served him there two years; that afterwards *J. S.* delivered up to *R. A.* his indenture of apprenticeship. The court was unanimously of opinion that *R. A.* gained no settlement by his service at *Sebington*, having let himself without his master's consent, whose bankruptcy did not determine his apprenticeship; he continued not *sui juris*. The delivery of the indentures afterwards, if it should be looked upon as a subsequent consent, will not make his letting himself good, so as to gain a settlement by his service with *J. N.* if he had let himself to *J. N.* with *J. S.*'s consent, his service would have gained him a settlement.

The master of an apprentice hires her to another person by parol agreement, and she gains a settlement where she serves that person.

326. *Rex v. Inhabitants of St. George's Hanover-Square, M. 8 G. 2. Burr. S. C.* 16. *A. W.* a parish child, was bound apprentice by the parish to *G. L.* of the parish of *St. George Hanover-Square*, and served there forty days: afterwards, and during her apprenticeship, she was by parol

arol agreement, hired out by her master to *J. H.* of the parish of *St. Mary le Bone*, where she resided and worked above forty days, the said apprenticeship continuing; during which time her master *G. L.* received her wages, and found her in clothes. *Lord Hardwicke*: If an apprentice by the consent, and upon the business of his master resides in the second parish, (and we must take this to be the business of the master, because he consented) he is irremovable, and gains a settlement there after forty days of such residence within the 8 *sect.* 3 & 4 *W. & M. c.* 11. In the case of an apprentice it is not necessary that the binding and inhabitation should be in the same parish. Order quashed.

327. *R. v. Fremington, E.* 39 *G. 2.* 2 *Burr. S. C.* 416. *M. B.* an apprentice bound by parish indenture, by her master's direction and consent, went to serve a third person in *Sherwell* for her own benefit. She continued with him above forty days, and then returned to, and staid with her master by indenture eight days, at the end of which her apprenticeship expired. *Lord Mansfield*: The general principle (that the settlement of an apprentice is in the parish where the last forty days service was performed) being admitted, the case is reduced to a very short question. The pauper was not discharged from her apprenticeship. Her master gave her permission to serve another person for her own benefit. She afterwards came back, and staid with her master till the expiration of her apprenticeship. The apprenticeship neither was nor was intended to be discharged, consequently the service in *Sherwell*, was a continuance of the apprenticeship, and performed under it. *Per Cur.* Order of sessions must be quashed. *R. v. Goodnestone.*

Apprentice serving for his own benefit without an assignment, gains a settlement.

328. *R. v. Tavistock, T.* 7 *G. 3.* 2 *Burr. S. C.* 578. The pauper was bound apprentice by the parish of *La-merton* to *R. Rundle*, with whom he lived several years in that parish, and then *Rundle* transferred him by assignment to *John Prout* of the parish of *Milton Abbot*, with whom he lived till he was twenty years and an half old, at which time he offered his service to *T. M.* of the parish of *Kelly*, who apprehending that he was an apprentice to *Prout*, sent his son over to *Prout* to know whether he consented that the pauper should live with him: To which *Prout* answered with all his heart, he might live with him or with any body else, provided he performed his agreement with him, which was to pay him a guinea a-year, during the remainder of his apprenticeship.

A. assigns an apprentice to B. he may assign to C. without assenting the consent of A. See pl. 318.

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ticeship. Accordingly he lived with *T. M.* in *Kelly* for a year and upwards; and the sessions held that he gained no settlement thereby. *Sir F. Norton* and *Mr. Thurlow* now shewed cause, why this order should not be quashed. First that being a parish apprentice, and an infant, he could not himself consent to be transferred, and yet he could not be transferred without both his own consent and that of the Justices. Secondly, Neither if he could, would it follow, that he could live in *Kelly* as an apprentice without the privity of his first master *Rundle*. *Mr. Dunning* on the other side, insisted that an assignment, or a consent of an apprentice's master is sufficient to gain a settlement, and that it was totally immaterial whether the guinea was paid. *Lord Mansfield*; The only question is, whether *Prout* assented? It is clear that he did consent, and his consent included that of the first master. The other Judges concurring, The order of sessions quashed.

329. *R. v. Charles*, T. 12 G. 3. *J. Hodge* the pauper was bound by the parish of *Knowstone*, to *John Fisher* for an estate which he rented in that parish of *John Loosmore* who covenanted with *Fisher*, that if a second apprentice was bound for that estate (which second apprentice *Hodge* was,) that he and his representatives would discharge the said *Fisher* from any expence that he might incur thereby. That *Hodge* being bound to *Fisher*, he applied to the widow and representative of *Loosmore*, who who took the pauper, received the parish money with him, and went with the pauper into the parish of *Roseash* where she then lived, and where he continued with her about two or three years; when *Mrs. Loosmore* intermarried with *John Slader* of the parish of *Charles*, and there the apprentice continued with her for about three years, when the boy became a cripple by loosing of his feet: Whereupon, *Slader* and his wife, about three months before the apprentice was discharged, sent the apprentice to *Fisher* his original master, (who knew of his being a cripple) and insisted on his receiving the pauper, which *Fisher* refused, until she promised to pay him all the expence he should be at in taking care of the pauper, and then *Fisher* put the pauper to live with the pauper's grandmother in the said parish of *Knowstone*, at 18 pence per week, where he resided seven weeks, when he was removed, having been first discharged by the court of sessions from his apprenticeship, after a residence of more than forty days, for which *Fisher* paid her accordingly.

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The sessions were of opinion, that the pauper did not gain a settlement by the residence with his grandmother at *Knowstone*. Mr. Serjeant *Glyn* and Mr. *Heath*, in support of the order of sessions, contended, that the pauper served in *Charles*, that he did not return to *Knowstone* till it was agreed that the said master should have, *i. e.* a week with him, that he must gain a settlement where he actually served, and not in *Knowstone* where he was incapable of doing any service. That there is no case where an apprentice gains a settlement by assignment to another, without his doing his service there, especially too, where the original master does not appear to take him from the person to whom he was first assigned in the character of an apprentice. That the residence with the grandmother was the same, as if he had been originally taken by his grandmother out of charity, and was the same as if he had never returned to his master; because he was not taken by her in the relation of a servant or apprentice. That the master *Fisher* was absolutely and altogether discharged from him by the assignment of him, inasmuch, that the assignee would have been intitled to the profit of his service. That these are cases of natural justice, which are determined on the ground of restitution for service and labour. That he went to his grandmother for her care, is the same thing as if he had gone to a common hospital. They cited the *King and Clapham*, and *King and Tavistock*, 7 G. 3. Mr. J. *Aston*: This is an apprentice in husbandry, *Fisher* having another apprentice applied to Mrs. *Loosemore* to take him agreeable to her covenant; she takes him with his consent, and takes the parish-money, which to be sure looks like an assignment, but is not one; she Mrs. *Loosemore* returns him back to the master, being then a cripple: It is not stated whether he did any service in either place, his residence in *Knowstone* being with his master's privity and consent is sufficient, altho' he did no service there; if the residence was not casual, which in this case it was not. It has been often said, that the labour and service of apprentices is the consideration of settlement; but that is not true in a thousand instances: It is the residence without any service that does it, if the master be privy and consenting to it. Mr. J. *Willes* and *Ashurst* being of the same opinion, the order of sessions was quashed.

Settlement of Apprentices more particularly by Lodging or Residence.

330. If an apprentice is bound to one who has no right to take an apprentice, yet a settlement will be gained under such an indenture by service. *Vin. App.* 29. *MSS. T. 9 Ann.*

331. *Poor's Settlements*, 311. An apprentice well settled being with a master that is removeable cannot be removed with him, but the master may complain upon the covenant.

332. Case of the parishes of *St. Brides* and *St. Saviour's*, *H. 4 Ann.* 2 *Salk.* 533. *A.* was bound apprentice for four years to *J. S.* lived with him all that time in *St. Brides*. *J. S.* was only a lodger, and had no settlement there; and the court held that the apprentice was settled in *St. Brides*, for he was not a person removeable, nor does his settlement depend on his master, as that of a wife on her husband for a settlement, but he gains a settlement for himself, within 14 *Car.* 2. by forty days inhabitation, and so of an hired servant; but the matter went off upon another exception.

333. Cases of the parish of *Walbourn* and *All-saints*, *T. 9 Ann.* Fol. 162. The question was, whether a person who is bound an apprentice where the master had a settlement, and his master and he remove, and he serves five years of his time in the parish, here his master had no settlement, the apprentice shall gain a settlement in the parish where he was bound and served two years, or where he served the last five years? *Powell J.* It matters not whether the master had any settlement or no, the apprentice will certainly gain a settlement in the parish where he served the last five years. If a man has a settlement, and a person is bound his apprentice and lives with him forty days, that gives the apprentice a settlement; and if the master removes and has no settlement, then the last parish where he serves his master forty days, and his service is ended, that gains him a settlement in that last parish. *Powys J.*: This is a settled point and there is a case much stronger than this: As if a man is lodger and takes servant who serves him a year, that gives the servant a settlement in that parish though the master had none himself. The order of the sessions, being to remove him to the parish where he was bound and served two years, was quashed by the whole court.

Apprentice to a lodger gains a settlement.

See pl. 332.

A. is bound apprentice and serves his master for two years in the parish where his master is settled, and then removes with his master and serves five years, where the master has no settlement.

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334. *Case of the parishes of Missenden and Grimsfield, H.* 1 G. Fol. 171. *J. S.* is bound apprentice with *J. N.* at *Grimsfield* by indenture; but upon sealing the indenture it was agreed by parol, that *J. S.* should live with his master for one fortnight; and with his father in *Missenden* the next fortnight; and it appeared that he never lived forty days together with his master. The question was, whether this was sufficient to gain a settlement in *Grimsfield*? And it was held not, because this was fraudulent. See pl. 337.

It was agreed between the master and father of an apprentice, that he should live alternately with his master and father a fortnight at a time.

335. *R. v. St. Olave's Jewry, E.* 3 G. Str. 51. *A.* was bound to a *Cobler*, who keeps a stall in one parish, and lies in another, and the apprentice in a third; the sessions adjudge the settlement where the stall is, because the service was there. *Per Cur.* The apprentice has gained no settlement in either of the three parishes; for the stall is not sufficient to give him one, as the master lies in another parish. Order quashed. *Sed Quære.* See pl. 338.

336. *R. v. St. Mary Colechurch, T.* 3 G. Str. 60. An apprentice of a seafaring-man, served him for three months on land, in the day time, in the parish of *St. Mary Colechurch*, but lay at night on shipboard in *Ratcliffe*. By the *Ch. J.* A man properly inhabits where he lies, as in the case where the house is in two leets, he is to be summoned to that in which his bed is. (2 *Inst.* 122.) Order quashed.

A. serves B. on land in one parish, but lies on board at night in another.

337. *R. v. Cirencester, H.* 10 G. Str. 579. It was stated, that an apprentice was bound in the parish of *A.* and that he lived there off and on for three quarters of a year. It was objected that this was no settlement, since he might not inhabit forty days together. *Per Cur.* That is not necessary; and the order for making it a settlement was confirmed.

Apprentice inhabits off and on, for three quarters of a year, and held to gain a settlement.

338. *R. v. Inhabitants of St. John the Baptist in the Devises, T.* 10 G. 1 *Strange* 594. Upon a special order stating that *A.* was bound apprentice to *B.* and served five years in the parish of *St. John*, but had always lain in the parish of *St. James* with his father, the sessions adjudge it a settlement in *St. John's*. *Per Cur.* The order must be quashed; the serving without lying in the parish makes no inhabitation, which is necessary to gain a settlement in the case of an apprentice; and so it was held in the case of *St. Olave Jewry*, and in the case of *St. Mary Colechurch* against *Ratcliffe*. *Ld. Raym.* 1371.

A. serves B. as an apprentice in the parish of A. but lies in another, and is served where he lies.

339. *Case of the parishes of Stokesfleming and Berry Pomery, H.* 1 G. 2 *Salk.* 533. *Serjeant Belfield*: *J. S.* was bound an apprentice in *Stokesfleming*, and after goes with his mistress

Apprentice settled where he serves forty days.

mistress into *Berry Pomery*, and lives there for several years with his mistress till his time was out; the mistress gained no settlement in *Berry Pomery*, as appears by the order itself; and therefore the Serjeant would have had it, that the apprentice gained none. But the whole court held unanimously, That though he was not bound an apprentice in *Berry Pomery*, yet he was settled there by serving his master there forty days.

341. *R. v. Inhabitants of Titchfield. Mich. 4 G. 3. Burr. S. C. 511.* The court of sessions quashed an order of removal, and ordered the pauper *Philip Warfill* and *Anne* his wife, and *William* and *Sarah* their children to be settled in the parish of *Titchfield*, there to be provided for according to law. For that the said *Philip Warfill* bound himself an apprentice by indenture dated 24th day of *March* in the year 1761, for three years, to *William Footner* master and mariner, and that he the said *Philip Warfill* inhabited above forty days with his master in the said parish of *Milford*; that the said *Philip Warfill* falling sick, he, on account thereof, with the consent of his said master, went to his father in the parish of *Bewly* in the said county, and there continued forty days and was sick all that time; and to the present time and on his going to his father, the said indentures were mutually given up and not cancelled. *Mr. Cornwall* in support of the order of sessions argued. 1st, That it appeared manifestly, by comparing times and dates, that this *Philip Warfill* must have been a married man at the time when he bound himself an apprentice, for it was stated upon the sessions order, that he had a child of five years of age at the time that order was made, and that he had bound himself apprentice in the year 1761, consequently he was married when he bound himself; and he urged, that as the statute of 3 & 4. *W. & M. c. 11.* requires celibacy in a hired servant in one clause, the subsequent clause concerning apprentices must be construed to require them also to be unmarried. 2dly, That *Warfill* the pauper was settled in *Bewly*, by inhabiting forty days with his master's consent, and the delivering up the indentures was not a sufficient discharge of the apprentice without cancelling them, as appears by *Dalton* 180. *Mr. Solicitor Gen. Norton contra* answered — 1st. That his being a married man when he bound himself an apprentice, is not expressly stated or meant to be made part of the case, but is a mere inference now made at the bar by the counsel; but however the act does not require this circumstance

cumstance of celibacy in an apprentice, though it does in a hired servant, *s. 7.* relating to hired servants says "if any unmarried person" so that the act itself makes an essential difference between the two cases. 2dly, An inhabitancy, by reason of sickness shall not gain a settlement: suppose a servant breaks his leg in a strange parish and cannot be removed within 40 days, shall that gain a settlement there? And there is no difference between the indentures being given up, and its being cancelled, they amount to the same thing. The court being of opinion with Mr. Solicitor-general — the order of sessions was quashed, and the original order affirmed.

340. *R. v. Burton Bradstock*, H. 5, G. 3. 2 Burr. S. C.

531. *J. C.* was by indenture bound apprentice to *J. M.* of *Bridport*, then owner of a ship, for seven years to learn navigation, and the art of a sailor, and served him for the term on board the said ship, which was employed in a coasting trade from *Bridport* harbour, which is a bason within the parish of *Burton Bradstock*. It was made in pursuance of an act of parliament 11 G. 2. on a piece of land belonging to the said parish, and a cut was made up to it from the sea, through which ships sail to the bason. *Bridport* harbour was, and was considered as to the proper home of the ship. On the 7th day of December 1760, the said ship arrived in the said harbour, and continued there above forty days, during which time, the said *J. C.* resided, lodged and served his master as an apprentice on board the said ship, to take care thereof, and of his master's goods therein, and the ship was never in any other place or port forty days together, nor did *J. C.* gain a settlement after that time. Lord Mansfield: Lying in the parish is the same, whether it be on board a ship or on land. Casual residences, or accidental inhabitancies are out of the present case. This harbour is stated to be the proper home of the ship, and to be within the parish of *Burton Bradstock*, and the service was *bona fide* performed in the parish. Mr. Justice Wilmot; The inconvenience which might happen to the little town of *Burton Bradstock* (from being overburthened with poor by means of this bason, which is for the particular advantage of *Bridport*,) cannot alter the law. If the apprentice had lain in a house at land within the parish, there had been no question. The parish in this case had as much benefit from the apprentice's labour, as if he had lain by night upon land. We must take the law as we find it; We cannot alter it from any

Apprentice lying on board a ship in a harbour within a parish is settled there.

Apprentices.

apprehended inconvenience to a particular parish. Mr. J. Yates and Mr. J. Aston concurring, the order was affirmed.

Settlement of an Apprentice in an extraparochial Place.

A. is bound in an extraparochial place, and Holt Chief Justice held that he could not be removed thither. See title over-seers, &c.

342. *Clerkenwell v. Bridewell*, H. 11 W. 3. Ld. Raym. 549. A. who had been apprentice in *Bridewell* to the trade of a hemp-dressing, came to the parish of *Clerkenwell*, and there being likely to become chargeable, was removed to *Bridewell* which is in an extraparochial place. By Holt Ch. J. The Justices of Peace have not authority to settle a person in an extraparochial place, for the statute which gives them authority extends only to the poor within parishes. Parishes in reputation are within the act, but places extraparochial are not. And the order was quashed.

Settlements of Apprentices under Certificates.

Certificate-man purchasing an estate, his apprentice may gain a settlement.

See settlement by office.

At the end of the apprenticeship the master becomes a certificate-man.

343. *Ivinghoe and Stonebridge*, M. 6 G. MSS. Richard Plower was bound apprentice to John Emerton, who was legally settled at *Ivinghoe*, and served a great part of his time there, and then the master went with all his family as a certificate-man to *Stonebridge*, where he purchased an estate of 60 l. value: And after such purchase the apprentice lived with him six months at *Stonebridge*, at which time his apprenticeship expired. Per Cur. According to the case of *Burclear and Eastwood*, P. 5 G. 1. When a certificate-man makes a purchase, he immediately ceases to be a certificate-man, and becomes settled inhabitant; and as there is a service for six months as an apprentice in the parish where the master was settled, 'tis more than sufficient to gain him a settlement.

344. *R. v. Cliftidon*, H. 14 G. 2. Burr. S. C. 161. It was ruled by the court, that if the master of an apprentice is not a certificate-man, during some time of the apprenticeship, the apprentice gains a settlement, notwithstanding the master becomes a certificate-man immediately after the determination of the apprenticeship.

345. *R. v. St. Maurice's in Winchester*, M. 24 G. 2. Burr. S. C. 296. R. Stephens, born in the parish of *St. Maurice* under a certificate from *St. Mary Kalendar's*, served an apprenticeship for seven years to S. Mitchel in *Kingsworthy*; at the sessions S. Mitchel gave parol evidence, that he himself came into *Kingsworthy* under a certificate from

from *Mitcheldever*, which (as he gave in evidence) he delivered to one *Hide* an officer of the parish of *Kingsworthy*. But one *Earl*, the present overseer of *Kingsworthy* (who was served with a *duces tecum*) gave parol evidence, that there was now no such certificate to be found in that parish, that he had never heard of such, that if there had ever been any such it must be mislaid. The sessions express their opinion to be, that, as no certificate in writing was produced, the place of the last legal settlement of the pauper is not at *St. Mary Kallendar*. But they do not declare where it is. They discharge the first part of the order of the Justices removing the pauper from *St. Maurice's* to *St. Mary Kallendar*, in the parish of *St. Mary Kallendar*; and then follows, that if this apprenticeship was served to a certificate-man, the pauper did not gain a settlement in *Kingsworthy*, and consequently remained settled in *St. Mary Kallendar* by virtue of the original certificate from thence to *St. Maurice's*. Mr. *Ford* moved to quash this order of sessions, upon this objection, that parol evidence of *S. Mitchel's* certificate was sufficient evidence, and that it was not necessary to produce the certificate. Mr. *Hamley* in support of the order denied that there was any evidence at all, that such a certificate was delivered or ever existed. That *Mitchel* was no judge of the validity of a certificate; that if there was one, it does not appear that it was lost, and therefore the fact of there being such a certificate is not made out. That parol evidence cannot be given of a certificate in writing. The act 3 G. 2. c. 29. s. 8. makes the oath of one of the witnesses, and the certificate of the Justice that such oath was made, to be the legal proof of a certificate. *Earl* only testifies that that he had never seen it, but does not appear that any search has been made for one. Therefore the settlement is in *Kingsworthy*. The counsel for *St. Maurice*, and against the order of sessions reply, that the parol evidence here given was sufficient, and was all that was possible for the parish of *St. Maurice* to give. That *Earl's* evidence imported a search to have been made in *Kingsworthy* for such a certificate, that after the interval of twenty-one years *omnia præsumuntur rite acta*. That the residence under the certificate during the whole apprenticeship, shews it to have been regular, and is like possession under a deed. Lord Ch. J. *Les*: The sessions have admitted and stated the evidence on both sides, and conclude that as no certificate has been produced, the place of last legal settlement

settlement is not in *St. Mary Kalendar's*, so that it appears that they receive all the evidence that was given; and it does not appear that any objection was made to parol evidence. It is not now insisted on, that this was conclusive evidence to the Justices, there was a certificate. If there was one, yet it might be an irregular certificate. (*Rev. v. St. Olave's Burr.* 283.) The Justices have been so far from refusing to admit parol evidence, that they actually received all that was offered; therefore I see no reason to quash their order, in which the other three Judges concurred.

A. is certificated by B. to C. he afterwards buys a house in D. An apprentice gains a settlement in D. by service to A. there.

346. *R. v. High and Low Bishopside*, T. 28 G. 2 v. 2 Burr. S. C. 381. *Jonathan Joy* went by certificate from the town of *Menwith cum Darley* to *Reade* in the township of *High and Low Bishopside*, and resided there some years. Afterwards, about eighteen years ago, he purchased a house for 10*l.* in *Dacre cum Bursley*, and went to inhabit there, and carried his said certificate and delivered it to the proper officer there, and continued to inhabit in the said house to this present time. In the year 1744, *John Thackeray* the pauper was bound to him as an apprentice, and performed the apprenticeship with his master who inhabited the whole time in his said house. *Ld. Ch. J. Rider* delivered the resolution of the court. It has been said that the certificate binds the parish giving it against the whole world, but by 8 G. 2 W. 3. the certificate is to bind the parish giving it, when, and not before, the person mentioned in the certificate becomes chargeable to the parish to which such certificate was given; but this act does not give the right of removal to any third parish, it relates only to the parish, township or place to which such certificate was given. But it is said that this certificate was delivered by *Joy* to the parish of *Dacre*, at the time when he came to inhabit there. That was neither necessary nor proper, it ought to have been left with the officers of the parish of *Bishopside*. The man had a right to come into the parish of *Dacre* without a certificate, by his purchase there. It is not a general rule without exception, that every parish is bound to receive a pauper, who comes with a certificate which is not directed to that parish. The true construction of the 12 Ann. is that in respect to the certificated parish, such binding and inhabitation shall gain no settlement, but another parish is not within the grievance. We are all therefore of opinion that the pauper

per gained a settlement in *Dacre cum Buerly*, by serving his apprenticeship there. Order quashed.

347. *R. v. Westbury, H. 32 G. 2. 2 Burr. S. C. 476.* *W. S.* was bound apprentice on the 4th December 1753. to *J. C.* who then, and for several years had resided in *Westbury*, but was legally settled at *Harptree*. The said *J. S.* having been some years before applied to by the officers of *Westbury*, to obtain a certificate from *Harptree* (which he then promised to do) did afterwards, on the 26th day of the said December, obtain and deliver to the officers of *Westbury*, a certificate from *Harptree*. *W. S.* served and resided three years under the said indentures with *J. C.* in *Westbury*. Lord Mansfield delivered the opinion of the court. It is in the nature of a condition precedent to the gaining any settlement at all by an apprentice, that the apprentice must have been bound to, and served for forty days, a person who did not come into or reside in the parish forty days by means of a certificate. And as in the present case, this precedent condition has not been performed, he cannot have gained a settlement. It is distinguished from the case, to which it has been compared by the counsel, of a servant hired, when unmarried, and marrying before his year is expired, which has been holden not to prevent his settlement, because there the event was subsequent to the contract which was complete, and strictly regular when entered into, and required no precedent condition of that kind; it being only necessary to be unmarried when hired, it is then in the nature of a condition subsequent. But this is a condition precedent, and the apprentice is under an absolute disability of gaining a settlement, unless he is bound and serves forty days to a man, who did not come into, or reside in the parish, by means of a certificate, which this pauper not having done, has not gained a settlement.

Two and twenty days after an apprentice is bound, his master becomes a certificate man: It was held that he gained no settlement, but that if forty days had intervened between the binding and the certificate, he would have gained a settlement.

348. *R. v. Spotland, H. 5 G. 3. 2 Burr. S. C. 527.* *J. H.* was bound apprentice to one *Oldham* of *Casleton*, a certificated person, from *Middleton* to *Casleton*, and served his master at *Casleton* for some years, and then removed with his master to *Spotland*, and served him there forty days and upwards, and then married a young woman whose parents lived at *Casleton*, with whom he lodged at her parents house in *Casleton*, for about six months till the expiration of his apprenticeship, but daily worked with his master in *Spotland*. It was determined by Lord Mansfield and Mr. Justice Wilmot, that he had

A. was bound to B. a certificate person from C. to D. he served some years at D. and then went with and served B. at E. and then married, and lodged at F. but worked at E. He is settled at E.

not

not gained a settlement in *Castleton*; that as it was admitted on both sides that he had gained a settlement in *Spotland*, that he should be sent there, and not to the settlement which he had prior to his being bound apprentice. *N. B.* Mr. Justice *Wilnot* said that if it had not been admitted that he gained a settlement in *Spotland*, there might have been some difficulty in proving it. Mr. *Dunning* alleged that it had been so determined in *R. v. Pabam*.

Certiorari.

349. *Abley's case*. T. 9 W. 2 Salk. 479. Two orders were removed by *Certiorari*, but the return in the schedule, annexed to the writ was made not by two Justices, but by the clerk of the Peace, who was not the person to whom the *Certiorari* was directed and a new *Certiorari* was granted. And in *Gately v. Green*, M. 7 W. Comb. 344. It was held sufficient that it is said in the record, that the order was under their hands and seals, the order itself being delivered to the master for his indemnity.

CHAP.

CHAP. IX.

Removal of the Poor.

Of the Authority of Justices of Peace, respecting the Settlement of the Poor, *pl.* 357.

—Their Style in Orders of Removal, *pl.* 356.

—Of the Complaint to them, on which their Order is to be grounded, *pl.* 362.

The Examination, *pl.* 369. — The Description and Adjudication, *pl.* 376. — The Direction of their Order, *pl.* 397. See 13 &

14 *Car. 2. c. 12. s. 1. 16 G. 2. c. 18. 28 G. 2. c. 27. & 7 G. 3. c. 21.*

IT is a rule of the court of King's bench, that whenever an order upon the face of it may be taken to be good or bad, the court will always suppose it to be right. *Fol.* 325.

350. *R. v. Banbury, T. 8 W. 3. Comb. 372.* A constable without a warrant, having brought a child from *B. to Banbury*, two Justices made an order, reciting the fact, to return the child to *B.* there to be provided for, according to law. The court held the order good, for returning the child to the wrong doers, and that part was affirmed; but it ought not to be said to be there provided for, &c. but they are to be left to take their course according to law; therefore that part was quashed.

351. *Anonymous, M. 10 W. 3. 2 Salk. 482.* It was settled that if the first order is not good, no subsequent order, on an appeal, can make it good. Same resolution, *Trin. 2 Ann. between Selon and Ripley, Holt 508.*

352. *Braiton and Ustey, H. 12 Ann. Poor Sett. Pl. 53.* The Justices make an order which is to continue till sessions, and then the sessions made an order, both which were quashed. The first, because the Justices have not power to make such an order, and the sessions making an original order, that is void likewise.

Order to continue till sessions, insufficient.

Removal of the Poor:

Justices who have made an order may before appeal supersede it.

353. Parishes of *Pancras* and *Rumbold* in *Suffex*; *T. 2 G. —6 Strange*. Two Justices make an order of removal from the parish of *Pancras* to *Rumbold*: within three days, the Justices reciting that they were surprized, supersede it, and command the churchwardens to return the former order to be cancelled. *Whitaker* Serjeant insisted that the Justices could not issue such a *superseas*, and cited *Salk. 472. Per Cur.* The *superseas* is well sent by the Justices, and to prevent the charge of an appeal; and the last order was confirmed.

Two families not to be removed by one order. Seetitle Removal of families, in the chapter on settlement by birth.

354. Case of the parishes of *Chewton* and *Compton Martin*. *M. 8 G. Str. 471*. Two Justices make one order for the removal of two families, which the sessions quash for insufficiency; in support of order of sessions it was asked, supposing the removal of one is legal, and the other illegal, and there is an appeal to the sessions from both, and the order is confirmed as to one, and reversed as to the other; What is to be done in that case as to the costs? The statute 8 & 9 *W. 3.* giving costs to that parish in whose favour the appeal is determined, and now the appeal will be determined in favour of either, or of both, it cannot be said that the order is reversed, because it stands good as to part, and it is not confirmed, because it is not held good as to the whole. The court quashed the order, and gave this further reason, that the party removed had a right to appeal; for it may be that he was removed from his own estate, and his appeal will consequently draw over the other matter in which all parties may acquiesce.

355. *R. v. Welchman, E. 12 G. 2. MSS. 2.* The mayor of *St. Albans* sent a poor woman who was big with child, and did not appear as a vagrant, but at her own request, by a pass to *Birmingham*, the place of her husband's nativity; and the Justices of the Peace of the county of *Warwick* would not take her in, but sent her back again to *St. Albans*. Mr. Sol. Gen. moved for an information against the Justices, but the court denied it, because, as the woman was not a vagrant, the mayor had no right to send her by a pass, but it should have been by order of two Justices of Peace, according to 12 *Ann. c. 23*. The court seemed to think, that as she had been removed to *Birmingham*, the Justices there acted very wrong in sending her back again.

Style of Justices. See the 26 G. 2. c. 27.

By the 7 G. 3. c. 21. which premises, That inconveniencies having arisen from their being only one Justice of the *quorum* in divers corporate places, It is enacted, That all acts, orders, adjudications, warrants, indentures of apprenticeships, or other instruments which shall be made by virtue of any act or acts of parliament, made or to be made by two or more Justices qualified to act within such cities, boroughs, towns corporate, franchises, and liberties, though neither of the said Justices are of the *quorum*, shall be valid, &c.

356. It is not necessary that an order of removal should be by Justices of the division, but one Justice must be of the *quorum*, and of or for the county, not merely (residing) in the county; and so it must appear on the order. 2 Salk. 473, 4. See 5 Mod. 321.

357. But an order of Justices is not to be quashed, merely because it does not express that one or more of them is of the *quorum*. See statute 26 G. 2. c. 27.

358. Not sufficient that they are styled Justices on an appeal, they must be so styled in the order. 5 Mod. 322.

359. *R. v. Uplin, M. 10 Ann. Poors Sett. 27.* Order of Justices did not mention the county, but the clerk of the peace in the sessions order had laid it in *Somerset*. *Per Cur.* He cannot cure a defect in the original order. Another objection was also made that they are styled (*Coram*) *A. and B. Justices of the county*, but not of the Peace: It was answered, that the words *Quorum unus* do ascertain that they were Justices of the Peace. *Per Cur.* There is a *quorum* besides, in commissioners of the peace; and the order was quashed.

360. *R. v. Bourn, E. 8. G. 2. Burr. S. C. 39.* Two Justices made an order of removal of *H. B.* from *Spalding* to *Bourn*; The order which had in the margin the words "*Lincoln, Holland*," was directed to the churchwardens, &c. of *Spalding*, "in the parts aforesaid," and to the churchwardens, &c. of *Bourn*, in the county of *Lincoln*, and was in these words, "Whereas complaint hath been made by you unto us, &c. being two of his Majesty's, &c. (*Quorum unus*) for the parts of *Holland* aforesaid, that *H. B.* hath lately intruded himself into the parish of *Spalding*, &c. and there become chargeable, and where- as upon due examination it appears unto us, and we ac-

“ cordingly adjudge, that the said *H. B.* is become chargeable, and that his last legal settlement was at *Bourn*, by being apprentice in that parish to *J. L.* a glover: therefore we adjudge *Bourn* to be the place of his last legal settlement.” The order of sessions recites this order, and that in it there was an adjudication, that he was likely to become chargeable to the said parish of *Spalding*. *Per Cur. Lincoln, Holland* is well enough, the court will take notice of the three divisions of this county: where the county is mentioned only in the margin of an order, and not repeated or referred to, in the body of the order, it is bad; but with such a reference, the order is good. An order of removal can only be on complaint of the churchwardens, &c. where the person comes to reside. If such complaint is express, that the pauper is likely to become chargeable, to that particular parish, but the Justices adjudge generally, that he is likely to become chargeable, without specifying to whom (it may be to his relations) such order is bad. The adjudication must at least have a plain reference to the complaint. Lord *Hardwicke* observed, that the case of *Nicholas* in *Gloucester* was similar to this, “ it appears to us, and we do accordingly adjudge,” and that notwithstanding the word “ accordingly,” that order was quashed. Same resolution in the case of *Uffculm v. Chylthaydon Burr*. S. C. 138. See 395. The three objections, that it ought to have been adjudged in the order of Justices, that the master was not a certificate-man, and that the apprentice served him forty days at *Bourn*, and that the order was directed to the overseers of the parish, and not of the poor of the parish; and that *Quorum unus* is not a technical term, (though *Quorum* alone is) are all of no consequence. Both orders quashed on the third exception, for want of adjudication. *Fol.* 306.

361. *R. v. Madley*, *H.* 16 G. 2. *Burr.* S. C. 202. An original order of Justices, (which was confirmed at the sessions generally), was holden good, though, the Justices call themselves Justices for the county of *Shropshire*, (instead of *Salop*), because the appellation is common both in orders and acts of parliament. The court also over-ruled another objection, that it was only stated in the order, that he lived one year a servant, &c. without mentioning any hiring) because, though it would not have been sufficient upon a special case from the sessions, yet this being confirmed only generally at the sessions, it is sufficient. And *Ld. Ch. J. Parker* observed, that you must either set forth the age of the child, (to shew that it ought to go with the parent for nurture), or

County mentioned in the margin.

Not necessary to state that the pauper is not a certificate person.

Justices for the county of Shropshire.

ad-

adjudge its settlement; neither of which being done here, the order is insufficient as to that; in which the other Judges concurred.

Complaint.

362. Complaint to Justices (as a foundation for an order of removal) need not be on oath. *Burr. S. C. 150.*

363. *R. v. Westwood, H. 4 G. Str. 73.* In an order of removal, the complaint was recited to be to one Justice only, but the ordering part is by two Justices; and held good. The adjudication was; We order him to be removed to *A.* as the place of his legal settlement. Quashed for insufficiency.

364. *Horsham and Henfield, E. 5 G. Burr. S. C. 24.* The complaint was expressed to be made by "you" saying which parish complained, and allowed to be good, because the strict sense of the word "You" was, that the complaint was made by all of them, as Lord Hardwicke observed upon this case being cited in *R. v. Stepney, E. 8 G. 2.* in which case his lordship held that "Whereas it appears to us, &c." "And" we do accordingly adjudge, is a good adjudication; notwithstanding that the word "And" does in strictness connect the recital, and grammatically makes the whole sentence to be recital only: But the court quashed this order, because the order of two Justices is too uncertain, having no county mentioned in the margin, and being directed by the churchwardens and overseers of two parishes, in two different counties, and they only call themselves Justices of the Peace for the county aforesaid.

365. *R. v. Weston Rivers, H. 7 W. 3. Salk. 492.* Two exceptions were taken to an order of Justices, that it was not said to have been made on complaint of the churchwardens, &c. and that it did not appear in it that the pauper did not rent 10*l.* a year. Another question arose upon reading the return which set forth, that upon complaint of the churchwardens and overseers of the poor concerning *A.* to the Justices, they the said Justices are one of the *quorum* made the following order, &c. so that it was urged that the defect in the order was supplied by the return of the *Certiorari*. As to the last exception, *Holt Ch. J.* said, that before the 13 *Ch. 2.* two Justices removed by consequence of law on 43 *Eliz.* by which it is ordered that every parish shall maintain its own poor; therefore the Justices considered who were properly the

Complaint to one, ordering part by two Justices.

Complaint by not both parishes,

Complaint must be by the officers of the parish aggrieved.

Not necessary to state that the pauper did not rent 10*l.* a year.

Removal of the Poor.

poor of a parish; who were judged to be such as had abided there one month. Still there remained several doubts which occasioned the statute 13 & 14 *Cha. 2. c. 12.* and as such an order would serve to remove before that statute, why not now? At another day the Ch. J. gave the judgment of the court, that the precedents had been searched, and that they are without the clause (not renting a tenement &c. according to the form of the orders before 13 of *Cha. 2.* and therefore well enough. If the party rents a tenement of 10 *l. per Ann.* he might have appealed to the sessions. That the other exception was fatal, for no one can disturb a man coming into a parish, but they who have authority to do it; a complaint from one not concerned is nothing, it may be the parish are willing to keep him; that the return cannot cure the order, for the Justices in sessions had exercised their authority, and by the *Certiorari* have no power but to return the order of the Justices *in hæc verba*; and what they return farther the court can take no notice of. 5 *Mod.* 149. *Salk.* 147.

The words differences, allegations, and proofs do not amount to a complaint.

366. *Shagford v. Northbury, M. 10 Ann. Poors Sett.* 33. The words of the order are upon hearing the differences, allegations and proofs, &c. and the question upon them was, whether they did not amount to a complaint; and the court held that they did not, and the order was quashed. *N. B.* Whereas *A.* is likely to become, &c.: These are to remove him with his three children. *Per Cur.* This must be quashed as to the children, for they have removed more than is complained of. *Poors Sett.* 45.

367. Case of the parishes of *Macclesfield* and *Leithfrith*, *MSS.* 2. Order was made on the complaint of the churchwardens, &c. of the borough of, &c. To which it was objected, That a borough may consist of several parishes, and then it becomes uncertain which of the parishes are grieved. By the court, take a rule to shew cause.

368. *R. v. Great Bedwin, T. 14 & 15 G. 2. Burr. S.C.* 163. The inhabitants of *Great Bedwin* appealed to the sessions, from an order of Justices beginning thus, "*Wilts,* —To wit,—To the churchwardens, &c. of the parish of *Wilcot*, and to the churchwardens, &c. of the parish of *Great Bedwin* in the said county," and it states that *C. M.* and his family have dwelt for some time in *Wilcot* under a certificate from *Great Bedwin*. And then goes on thus, "now the said *C. M.* being reduced to great poverty, lately applied to the churchwardens, &c. of the parish of *Wilcot* aforesaid, who accordingly did relieve him;" and therefore, the Justices remove him to *Great Bedwin*. Then the sessions, on motion on behalf of the parish

Justices have no jurisdiction, but on complaint of the overseers, &c. See *Andr.* 361.

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parish of *Wilcot*, suggesting defects in form, and praying that they may be amended pursuant to 5 G. 2. c. 19. and being of opinion that the original order was amendable by the act, for it appears to them on due examination upon oath, that the said order was really and truly made, by the two Justices on the complaint of the churchwardens, &c. of *Wilcot* in due manner made to them on that behalf; "That the said C. M. his wife and children are actually become chargeable to *Wilcot*;" but that the omitting to mention it was a mere mistake in drawing up the order, and that it doth also appear to this court, that the said G. H. and J. S. were, at the time of making the said order, two of his Majesty's Justices of the Peace for the said county of *Wilts*, and one of them of the *Quorum*, and that the omitting to mention the same was also a mere mistake in drawing up the said order; therefore the said defects to be amended in court. Lord. Ch. J. Lee: The act directs that the sessions shall amend defects in form, and afterwards proceed on the merits: One would think that this meant defects or mistakes appearing upon the face of the order, mere defects or wants of form. But some of these matters here amended seem to be merits, as the adding upon complaint of the overseers of the parish, from whence the paupers were removed, without which complaint the Justices have no jurisdiction. Then what can be more of the merits than the certificate-man's having become actually chargeable? Now the two Justices have not adjudged that, they only say, that he applied to the overseers, and was relieved by them, but it does not appear that it was at the parish expence. If there be any opposition between form and merits, these matters must be merits. As to their being Justices of the county, a plain reference to the margin is sufficient; Yet this is uncertain as it is worded, to which of the two parishes, the words "in the said county" relate; they were both in *Wiltshire*. See 2 Str. 1158. The allowing such amendments as these to be within the true construction of this statute, would throw the determinations of all cases of this sort into the hands of the sessions. The other Judges concurred, and Mr. Justice Wright added that the sessions cannot amend any thing which requires examination; and the orders were quashed.

Examination.

Not necessary
that the pauper
should be present
at the examina-
tion.

Exam nation
" before us, or
" one of us,"
not good.

Order of removal
made on the oath
of a woman
whose husband
was beyond sea.

369. *E. 10 W. 3. Comb. 478.* A poor man ought to have notice, and to be heard before he be removed; but it is not absolutely necessary.

370. *R. v. Stanstead Mountfichet, T. 12 W. 3. 2 Salk. 488.* An order was made by two justices to remove *H.* with his wife and children from *Ware* in the county of *Essex*, to *Stanstead* in the same county. 1st exception, That the order removes with his wife and children. Second exception, That it was said "it appears upon examination " before us, or one of us, &c. and the examination " ought to be before both, for both are to join in the removal." To this it was answered, In order to distinguish it from the cases relative to removals of a man, his wife and family, that he might have servants not removeable, but that children ought to follow their parents; and by the 13 & 14 *Ca. 2. c. 12.* the complaint is directed to be made to any Justice, and that in consequence one Justice may examine, and it is only necessary that two should join in the order of removal. But the court was against them on both points; suppose the son has gained a settlement by service for a year at *A.* and afterwards the father goes into the parish, and his son lives with him, such an order as this would remove the son, though he is not removeable. As to the second exception, *Gould J.* said, The statute, directs, and the practice is, to make a complaint to one Justice, and he directs his warrant to bring the pauper before two Justices, who then examine and remove. *Farestry 54.*

371. Examination of a pauper must be by both the Justices who sign the order. 2 *Str. 1092.*

372. 12 *Ann. Sett. Poor 18.* Order of removal made upon the oath of a married woman, that her husband was beyond sea, and that she was last settled at, &c. was quashed at the sessions, it not being on the oath of the husband; but the sessions order was quashed.

373. *R. v. Coln St. Aldwins, M. 13 G. 2. Burr. S. C. 136.* Exceptions were taken to an order of removal of a bastard child, (whose putative father the Justices adjudge to be dead) from *H.* in *Wilts.* to *Coln St. Aldwins* in *Gloucestershire.* First, that it is made by two Justices of *Wilts.* and is grounded upon the examination of the mother of the child removed, taken by two Justices of *Middlesex*, which is not sufficient, though verified by an affidavit

Adavit that it was duly taken. Secondly, It is not even said to have been taken within the county of *Middlesex*. Thirdly, A nurse child of six years old ought to have been sent with its mother. Fourthly, There was another order depending at the same time for the removal of this child from *Coln* to *H.* it being made on the 21 April 1737, was confirmed on appeal in *July* following, and in the subsequent *December* the present original order of Justices was made. To this last exception it was answered, that the order of sessions confirming the order of removal from *Coln* to *H.* was quashed in *B. R.* therefore that did not stand in the way of a second order of removal to *Coln*. Lord Ch. J. *Lee*: That does not appear, as it stands it seems to conclude you. The exception to the evidence has a great deal of weight. Certainly it is not necessary for the Justices to set forth the evidence on which they ground their adjudication. But if it appears, that they have received, and regarded evidence, which they thought not to have received, it will vitiate their order. Now it is plain that these *Wiltshire* Justices have grounded their adjudication upon an examination, transmitted to them by the *Middlesex* Justices. What they examined and inquired into upon oath, was the conveyance of the child from one parish to another. The examination on which they relied, having been taken by two Justices of another county, and the person examined remaining still alive, for ought that appears to the contrary; it is plain that this deposition ought not to have been received as evidence, on which to ground their adjudication, though it might perhaps, have been used as concurring evidence. I have often heard it declared here, (and by Mr. J. *Eyre* particularly,) that both Justices ought to be present at the examination of the witnesses. Mr. J. *Page*: I remember a case where it was determined, that both Justices must be present, and that it is not sufficient for one Justice to examine and transmit it to the other, and that other to sign the order without examining into the matter himself. It does not appear that the *Middlesex* Justices had any jurisdiction; for no complaint appears to have been made before them, and if not, they could have no jurisdiction. If the woman was alive, she ought to have been examined by those Justices themselves. Order quashed.

374. *R. v. Howarth*. T. 13 & 14 G. 2. MSS. 2. The court granted an information against a Justice of Peace, for signing his own and his father's name, (another Justice of

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Information against a Justice for signing the name of another Justice, with his own, to an order of removal.

(of Peace) to an order of removal of a bastard child; the act of parliament expressly directing, that it shall be done by two Justices, and upon examination before them: Whereas the Justice whose name was signed by the other was at a great distance from the place, and was not at all privy to the transaction; and this is therefore an illegal act in respect to the consequence of it to the pauper and to the burthen of the parish; and though it is sworn that the practice in this county was for one Justice to sign the name of another, that will not excuse him, but is rather a greater reason for granting the information that this illegal practice may be put a stop to. A case was cited of the *King and Wyche, Trin. 11 & 12 G. 2.* Court held that an information should go against three Justices for granting an order of removal; three having signed it, and only one of them having examined the party.

Order of removal founded upon the examination of a man deceased between the examination and the making of the order.

375. *R. v. Great Bedwin, H. 8 G. 3. 2 Burr. S. C. 584.* The order recites the complaint of the churchwardens, &c. and proceeds thus: "And whereas upon due examination, and inquiry made into the premises on the oath of the said *W. E.* deceased, and other circumstances, it appears to us, and we accordingly adjudge, that the said *Mary E.* and her three children are become chargeable to the parish of *Mitcham*," and they adjudge, that the last legal settlement of *W. E.* the father deceased, is in *Great Bedwin*, and remove the paupers thither accordingly. Mr. *Baynham* moved for a rule to shew cause, upon the objection, that the order of the two Justices appeared to be bad upon the face of it, as being expressly stated by them to be made upon the examination of a person deceased. On shewing cause, Mr. *Dunning* the Solicitor General said, the fact was, that the man died between the examination and the making of the order. The objection now insisted upon by Mr. *Baynham* was the want of an adjudication in the order, and upon this objection, the rule was made absolute for quashing the order.

Descrip-

Description and Adjudication.

Sufficient, *pl.* 376. Insufficient, *pl.* 381. &c.

See *pl.* 363-4, 375, & 389.

LEGAL settlement and last legal settlement are the same, because by every new settlement, the former is discharged. 2 *Salk.* 473.

376. *R. v. Bishops Waltham*, 10 *Ann. Vin. Abr. Tit. Rem.* 565. Order of removal was thus, "We believe this fact to be true; and was held to be as good as if it had been," it appears to us to be true, and also where the order was, whereas the person in all probability is likely to become chargeable. *Ibid.*

377. *R. v. Rockvill*, T. 12 *Ann. Poors Sett.* 21. Whereas it appears upon the oath of *E. J.* that she and her daughter *Mary* was last legally settled in *Rockvill*, who are likely to become chargeable, these are to remove, &c. *Per Cur.* The words, who are likely to become chargeable, are always the words of the Justices: If it had been that they are likely to become chargeable, then it had been a recital only, and the words of the overseers; it is a sufficient adjudication.

378. *R. v. Southmarston*, T. 5 *G. Stra.* 189. Whereas *J. C.* and his wife is come into your parish, endeavouring to settle themselves contrary to law, and are likely to become chargeable, these are therefore to require you to convey the said *J. C.* and his wife from your said parish to, &c. *Pratt Ch. J.* I do not think it is necessary to shew they came in, but only that they endeavoured to settle; for that may be where the party properly never came in, as in the case of children born in one parish, whose parents are settled in another; but if it were necessary it is set forth by implication, which in the complaint is sufficient. The only two things necessary to be adjudged by the Justices, is the place of the last legal settlement, and that the party is likely to become chargeable, and these must be positive, but the complaint may be taken by implication. This is not false grammar, as *doth* was in *West's* case. It is common for Latin authors to use the singular number when there are two nominative cases, *detur nobis locus, hora*. If it were necessary we might re-
fer,

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ser, "is" to the husband, and his wife will follow of course. *Per Cur.* Order confirmed.

Was the place
of his last settle-
ment.

379. *R. v. Holbeck, M. 16 G. 2. Burr. S. C. 199.* The pauper at the age of nine was put apprentice by the parish of *Gildersan*, to *S. G.* of the same place, to serve till the age of twenty-four years. But the indenture was not upon stamp paper. The pauper was assigned by his master to *Th. of Gildersan* aforesaid, with whom he lived several years. Afterwards he was assigned to one *C. of Beeslan*, whom he served as an apprentice for ten years till he attained the age of twenty-four. Neither of these assignments were by writing. Immediately after the ten said years service, and without ever departing from his master's service, he was hired by the said master for one year, of which he served him about three quarters, and then left the service. *Per Cur.* In orders the margin is to be considered as part of the order, and a clear plain reference to it is sufficient; but in indictments the county must be expressed in the body, and a reference to the margin is not sufficient. Here the margin is borough of *Leeds*, and the direction is to the churchwardens, &c. of the township of *Holbeck* in the said borough. This reference is sufficient for an order. The adjudication of the two Justices that *Gildersan* was the last legal place of his settlement (in the *preterperfect tense*) is sufficient, it must be taken that it was so at the time of the adjudication. There is not a sufficient service under the hiring for a year, therefore the settlement must depend upon the validity of the apprenticeship. This indenture cannot be available in evidence in any court, by the express words of the act 5 *W. & M. c. 21. s. 11.* which stands unrepealed. But the binding could be no otherwise proved than by the indenture. Therefore it must be taken that the sessions have admitted it as evidence, their order must be quashed. *Mr. J. Wright* quoted some cases in which it had been so resolved.—See the same resolution as to that point in *R. v. Sciffan, Stra, 114.* See *pl. 226.*

Have become
chargeable.

380. *R. v. Honiton. E. 10 G. 3.* Whereas complaint has been made by you the churchwardens and overseers of the poor of the parish of *Honiton*, and to us whose hands and seals are hereunto set, two of his majesty's Justices of the Peace, (one being of the *Q.*) of the said county. That *Charles Dean*, &c. have lately intruded themselves into the said parish of *Honiton*, there to inhabit as parishioner, contrary to the law relating

lating to the settlement of the poor, and have become chargeable there. And whereas upon due examination and inquiry made into the premises by us the said Justices, it appears unto us, and we accordingly adjudge, that the said *Charles Dean, &c.* have to the said parish of *Honiton* become chargeable, and that their last legal place of settlement is in, &c. Motion to quash the above order, because it stated that the pauper and his family have become chargeable, not that they have been or that they are, or are likely to be so. But the court was of opinion, that have become chargeable must mean they are become chargeable, and that the order was sufficient, and therefore discharged the rule for quashing it.

381. An order runs thus: "Whereas *A.* will become chargeable if suffered to abide." To this it was objected that it might be ten years since, and the order was quashed. *Poors Sett.* 39.

382. *R. v. Weston, M. 8 W. 3. Salk. 473.* Order of two Justices reciting that, whereas *W.* is, as we are credibly informed, the place of his last legal settlement, quashed for not averring that it was the place of, &c. *N. B.* legal, and last legal settlement are the same thing, because by every new settlement the preceding is discharged. *Ibid.*

383. *R. v. Hackney, 9 W. 3. 2 Salk. 478.* Order reciting that whereas complaint has been made to us, that *E. F.* wife of *U. F.* is lately come into the parish of *St. Giles*, and is likely to become chargeable to the same, and whereas it appears on oath made by the said *E. F.* that her husband was last legally settled at *Hackney*; these are therefore, &c. quashed, because there is no judgment of the Justices concerning the last legal settlement, but only the oath of the woman. *Comb.* 413.

384. *Case of the parishes of Bury and Arundel, E. 9 W. 2 Salk. 479.* Whereas complaint hath been made unto us, that *J. D.* with his wife and children came from his place of abode, and last legal settlement in *Bury*, to *Arundel*, we therefore require you to remove. *Per Cur.* There is no adjudication of the Justices which was his last legal settlement, but only a complaint that *Bury* was, which doth not appear whether true or false. *2 Salk.* 479.

385. *W. Johnson's case, H. 10 W. 3. 2 Salk. 485.* Order to remove a man and his family held not good, because too general; for some of the family might not be removeable. Same resolution in the case of *Benton and Sifton, M. 5 G. Str. 114.*

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Whereas complaint hath been made by the churchwardens, &c. without any other adjudication.

386. *Suddlecomb and Burwash, T. 13 W. 3, 2 Salk. 491.* Exception was taken to an order of Justices, beginning with these words, "Whereas complaint hath been made by the churchwardens, &c. that J. S. is likely to become chargeable, &c. and ending without an adjudication to that effect by the Justices." *Holt Ch. J.* observed, that where the order is, "Whereas it appears to us, &c. on complaint of the churchwardens, &c. that J. S. is likely to become chargeable to the parish," it is well enough. But where it is as here, whereas complaint has been made, &c. it is insufficient. But it was agreed to refer it to the Judge of assize afterwards in *Easter term 2 Ann.* in the case of the inhabitants of *Darnall*; the same resolution.

A. was the last settlement of the father, and therefore they send the son there.

387. *R. v. Middleham.* Exception was taken to an order that the Justices have set forth, that *Middleham* was the last legal settlement of the father; therefore they send the son there, and it appears he was ten years of age. *Ch. J. Parker*: The Justices have made no adjudication what place was the place of the child's legal settlement; they only say that *Middleham* was the place where his father was last legally settled, and therefore they do remove him thither; they have left us to judge where he was last legally settled; and this is in the nature of a judgment, and ought to be more certain. *Et per tot'* the order was quashed, because the settlement of the father is not absolutely necessary to the settlement of the son. *Fol. Poors Law.*

According to their own knowledge.

388. *R. v. St. Mary's in Bristol, M. 10 Ann. Poors Sett. 32.* Adjudication of Justices that A. was last settled at *St. M.* according to their own knowledge; held not good, for he might have been settled elsewhere, and they not know it.

Do endeavour to intrude, and are likely to become chargeable.

389. *R. v. Gruffam, E. 13 Ann. Poors Sett. 11.* The order sets forth, that *Henry Tate* and his wife do endeavour to intrude into the parish of A. and are likely to become chargeable. *Mr. Raby*: There is not a sufficient complaint nor authority for the Justices to found this order upon; for they have no power to send a person away by an order, unless he has actually intruded into the parish. *Mr. Thomson*: The order says he is likely to become chargeable, and how can he be so unless he was actually in the parish? *Parker*: The party being poor is likely to become chargeable, and so is he likely to come into the parish, he endeavouring so to do, as the order says; the words do not import he is actually come into the parish. And *per Cur.* the order was quashed.

390. Adjudication that the pauper may become chargeable, is not good. *Str.* 77. *Fort.* 314.

391. *R. v. Westwood*, *H.* 4 *G. Stra.* 73. We order *A.* As the place of last legal settlement. to be removed to *B.* as the place of his last legal settlement; quashed for want of an adjudication that it was the place of, &c.

392. *Case of the parishes of Hovey and Kingsbury*, *T.* 8 *G. Stra.* 527. Two Justices adjudge the settlement of the husband to be at *Kingsbury*, that he is likely to become chargeable to *Hovey*, and send him, his wife and son of one year old, to *Kingsbury*. It was held to be well enough as to the wife and children. And the order was confirmed. The husband is adjudged likely to be chargeable, and the wife is removed.

393. *Case of the parishes of Alderbury and St. Edmonds in Sarum*, *T.* 6 *G. Poor Sett.* 90. Order stated that a child born of a poor travelling vagrant woman, in the parish of *Alderbury*, whose parents were unknown, was brought into the parish of *St. Edmonds*, who removed him to *Alderbury*. Sessions quashed this order for form. It was objected in *B. R.* That the order does not adjudge that he is chargeable but only in the recital part. It was answered, that there was no occasion, for the thing speaks itself; and it was impossible to be otherwise, the child being but 4 or 5 days old, and the parents unknown. *Sed per Cur.* There must be an adjudication, for possibly some person out of charity may relieve it. Sessions order confirmed.

394. *R. v. Flint*, *E.* 10. *G.* 2. Cases in *B. R. Temp.* Indictment for removing, or causing to be removed, &c. without shewing that the person removed was not able to maintain himself. *Hardwicke Ch. J.* 370. Indictment for removing a person from *F.* to *Chelmsford*, motion in arrest of judgment; because the indictment says he conveyed the pauper, or caused him to be conveyed, which is too uncertain; and because it does not shew, that the person was unable to maintain himself, and so it does not appear to be to the damage of any one. *Per Cur.* The indictment is bad on both exceptions, for the first, on the authority of *R. v. Stoker*, 1 *Salk.* 342. and 5 *Mod.* 137. and for the second, because, unless it is a conveying of a poor person likely to be chargeable; and to the damage of the parish, it is no crime. Judgment arrested.

395. *R. v. Uffculm M.* 13 *G.* 2 *Burr. S. C.* 138. Objection was made to an original order of removal of *R. M.* Not said to what parish chargeable. his wife and children (mentioning their names) from *Clysthydon* to *Uffculm*; that it is not said in the adjudication to what parish the paupers are likely to become chargeable: the adjudication being in this form, "And whereas upon due examination and inquiry made
2
" into

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"into the premises, it appears to us, and we accordingly adjudge, that the said, &c. are likely to become "chargeable," was held by the court insufficient, and the orders were quashed.

Fraud not well
adjudged.

296. *R. v. Weston*, T. 14 G. 2. 2 Str. 1156. A. took a farm of 10*l.* per ann. at *Kirton*, which had been let at the rent for six years last past, but before that at 7*l.* per ann. only, and took also a by-tack of 20*s.* a-year in *Kirton*, and his family lived so ten months there; when he first took these tenements, he was not of ability to stock them; and being told by the former tenant that 10*l.* per ann. was too much, he answered that he did not regard the dearthness, for as it was 10*l.* per ann. it would gain him a settlement, and put an end to a dispute between two towns, but desired him not to mention this conversation to any body. The sessions were of opinion, that he did not under the circumstances aforesaid gain a settlement. Lord Ch. J. *Lee*: We are not to determine the matter, upon the evidence given to the sessions, but upon facts stated and adjudications made by them. Here they have stated circumstances; but they have not explicitly stated the real value, nor have they adjudged any fraud. The value of a man's stock is not material, the value of the tenement, which is not altered by the value of the stock is the point. It might have been lately improved. They state a conversation relative to the value of the tenement, but they do not adjudge that there was any fraud, nor do they state, that it was under the value of 10*l.* a year, and the evidence rather proves it to be of that value. They must expressly state, that it is fraudulent, or else we cannot take it to be so, and we must take the case stated to be the whole case. Order quashed.

Direction of the order.

An order directed
to two parishes
both to remove
and receive, not
good.

397. *Belvin's case*, E. 7 W. 3. Comb. 325. Overseers of A. are to remove, those of B. to receive, and one order was directed to both parishes to remove and receive, and therefore quashed, because it is entire, and though counsel said here is a good judgment, that they were legally settled in B. yet the court answered, that was but the opinion of the Justices, and the foundation of their judgment, that they be removed.

Constables are
not bound to o-
bey an order of

398. *R. v. Wangford*, E. 10 W. 3. Carth. 549. Order of Justices confirmed at the sessions, was directed to the con-

constables of, &c. but not to the churchwardens or overseers of the poor, by which they were ordered to remove three men (naming them) with their families, from the parish of *Brandon* to *Wangford*. The following exceptions were taken to this order. First, that it was directed to the constables alone, who are not proper officers in this matter. *Per Cur.* Since the constables have executed this order it is well enough, though in strictness they are not bound to obey it, tho' directed to them; if a Justice directs a warrant to any person by name, who is no officer, the person is not bound to obey it; but if he does, and the matter is within the proper jurisdiction of a Justice of Peace, the warrant will be a justification for him. Second exception. The uncertainty of the meaning and extent of the word family, for servants and lodgers may be comprehended under that word, whose settlements are distinct from that of the master of the family, and are not to follow him as a charge to the place of his last settlement. The court was desirous to be more exactly informed of the particulars of the facts, than appeared on the special order, and both sides consenting, affidavits were made, by which it appeared that three poor men of *Wangford* came into the parish of *Brandon*, and there married three poor widows of *Brandon*, each of whom had children by their former husbands, some of which were under seven years of age, and others above that age. And this order was not only to remove the three men and their wives, but also the children to *Wangford* as the place of their last legal settlement. *Holt Ch. J.* The children are not removeable to the parish of *Wangford*, to charge that parish by settling them there, but as to the nurse children under the age of seven years, they might be sent thither with their mothers for nurture, but still the parish of *Brandon* must relieve them there, and not the parish of *Wangford*. And as to the children above the age of seven years, they ought not to be removed at all, being settled inhabitants of the parish of *Brandon*, and the removal of their mothers shall have no influence on the settlement of their children. Therefore the Justices have made an ill use of the word family. *Per Cur.* The order was quashed. *Salk. 482. 5 & 8 Comb. 478. Carth. 279. 1339. R. v. Inhabitants of St. Olave Southwark, B. 1 Ann. 2 Salk. 493.* The order recited, that whereas complaint has been made to us, &c. That T. G. hath of late intruded into the parish of *St. George*, we adjudge him to be last legally settled at *St. Olave*; these are therefore to require you to convey the said T. G. to the parish of

removal directed to them alone, but if they execute the order it is very well.

First exception. The uncertainty of the meaning and extent of the word family, for servants and lodgers may be comprehended under that word, whose settlements are distinct from that of the master of the family, and are not to follow him as a charge to the place of his last settlement.

Second exception. The uncertainty of the meaning and extent of the word family, for servants and lodgers may be comprehended under that word, whose settlements are distinct from that of the master of the family, and are not to follow him as a charge to the place of his last settlement.

Direction to the officers of that parish only in which the pauper is adjudged to be settled, to remove him, is not good.

St. Olaves. And the order was directed to the churchwardens, &c. of the parish of *St. Olaves*. Quashed, for they can only order the officers of the parish intruded into, to make a removal.

Justices in their orders are not obliged to take notice of the division of parishes into townships which maintain their own poor distinctly.

400. *Spittlefields and Bromley, E. 11 Ann. Vin. Abr. Tit. Rem.* A. was removed, to the parish of *Stepney*, which did not appeal. Exception was taken in *B. R.* to the order; that the removal ought to have been to the township of *Spittlefields*, for *Stepney* is divided into four townships, and the poor have been removed from one township to another in the same parish, and the statute takes notice of townships as well as parishes, and that *Spittlefields* is an hamlet of *Stepney*. *Per Cur.* If a person is removed to a wrong place, that place ought to appeal, and so ought *Stepney*, if it were a wrong place, or else the order will be *conclusor* upon them, but this is here a matter not in the record. Justices of Peace are not obliged to take notice of the division of parishes into townships and villages, which maintain their own poor severally and distinctly; *Stepney* upon an appeal might have shewn that the person did belong to the township of *Spittlefields*, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes, yet the churchwardens are overseers of the poor of the whole parish (though so divided) and have a superintendency over the whole township and villages.

Order for the officers of A. to repair to B. to relieve parishioners of A.

401. *Chypton and Ravistock, E. 12 Ann. Poors Sett. 49.* Whereas J. S. and his wife are last settled in *Chypton*, these are to order you the churchwardens, &c. of *Chypton* to repair to *Ravistock*, to relieve them, being so sick that they cannot be removed. *Per Cur.* The Justices have no authority to send for officers out of another parish, but are bound to maintain the poor as long as they continue with them. And *Powel J.* said that parishioners are not to be relieved till they are carried to the parish.

An overseer de facto, may receive a pauper who is brought to him with an order of removal directed to the overseer, &c.

402. *R. v. Mervel, H. 10 G. 3.* The pauper was settled in that part of the parish of *Mervel* which lies in the county of *Leicester*; there was an appointment of an overseer of the poor of *Mervel* by two Justices of the county of *Warwick*, to whom the pauper was delivered; but there is not now, nor ever was any overseer appointed for that part of the parish of *Mervel*, which lies within the county of *Leicester*, although there are several houses and substantial inhabitants in that part of the parish; the same person who was overseer was also churchwarden of the said parish of *Mervel*, and such officer has

has usually acted for the maintenance of the poor throughout the whole parish. Mr. Solicitor General: The objection upon this case is, that though the pauper might have been properly removed, yet not being received by an overseer he was not properly received. Mr. J. Yates: The person acted as churchwarden, and though not properly appointed, yet he was a sufficient officer, as an officer *de facto*.

403. *R. v. Kirkby Stephen, T. 10 G. 3.* William Blenkarn and his family were removed in August 1769, from the township of *Kirkby Stephen* to the township of *Whar-ton*. Upon appeal the case stated by the sessions was as follows: The parish of *Kirkby Stephen* consists of ten different townships, which maintain their poor separately, and have separate overseers, of which townships *Kirkby Stephen* and *Whar-ton* are two. The pauper was settled in the township of *Whar-ton*, by renting a farm of 25 l. a year for four years, and by residing upon it upwards of three years, and in the fourth year went to assist his sister, who was a shopkeeper at *Kirkby Stephen*, and lodged there with her upwards of forty days, during which time he went daily to manage, and occupy his farm aforesaid. Afterwards he went to *Newport* in the county of *Salop*, married there and had several children, and becoming chargeable, was removed from thence, by order of two Justices of the county of *Salop*. In February 1768, one of the overseers of the said parish of *Newport* brought the pauper and his family, with the said order, to T. Petty then overseer of the said township of *Kirkby Stephen*, and delivered the said order to him; Petty said, that the pauper belonged to the township of *Whar-ton*, and that he had rather the pauper belonged to the township of *Kirkby Stephen*, because he (Petty) had a larger estate in *Whar-ton* than in *Kirkby Stephen*, and then he went away leaving the order with the overseer of *Newport*, and the pauper. Notice was given to the overseers of *Kirkby Stephen*, and to the pauper, to produce the original order; but that not being produced, the court of sessions admitted a copy written and attested by the pauper to be read: It was directed to the churchwardens, &c. of the parish of *Newport*, &c. and to the churchwardens, &c. of the parish of *Kirkby Stephen*, &c. and the settlement of the pauper is adjudged to be in the parish of *Kirkby Stephen*. It appeared also, that about a week after the time that the pauper was brought to *Kirkby Stephen*, he went to *Whar-ton* aforesaid and delivered the original order of removal from

Removal of the Poor.

Newport to John Haswell who he had been informed was overseer of Wharton, who having read the order, said he could do nothing in it till there had been a parish-meeting, and returned it to the pauper. Some time afterwards the pauper was applied to by an inhabitant of Wharton, for a copy of the order of removal, which he accordingly delivered to him, and the copy was admitted as evidence in court. It appeared also, that the pauper remained in Kirkby Stephen, and was maintained by his sister, for near a year and a half, in the township of Kirkby Stephen, when his sister dying, he asked relief of the township of Kirkby Stephen. It does not appear that any appeal had been made from the order of removal from Newport, but the pauper had the order from the time that Petty left it, and was carried with it, by the overseers of the township Kirkby Stephen, before two Justices of Peace, when the said order was either left with the Justices, or delivered to Mr. Thomson, one of the overseers of the township of Kirkby Stephen, the said pauper not having since seen it. The sessions quashed the order of removal from the township of Kirkby Stephen to the township of Wharton. Lord Mansfield: This case resembles very much that in *Viner*, of *The King and Stepney*. The township of the parish which is named in the order, and to which the pauper is brought, ought to appeal. The Justices are not obliged, nor perhaps is it in their power to take notice of the divisions of parishes. The same statute (13 & 14 Car. 2.) which takes notice of the divisions of parishes, directs the removal of paupers, not to such divisions, but to such parishes. It would introduce extreme confusion and inconvenience, if townships might lie in this manner. There does not exist such a thing or place as the parish of Kirkby Stephen, for the purpose of maintaining the poor, and Kirby Stephen could not get rid of this order but by appeal: An order unappealed from is undoubtedly final. And the other Judges concurring. The order of sessions was confirmed.

CHAP. X.

Appeal to the Sessions.

Order of Justices not appealed from or deserted, *pl.* 404.—Appeal necessary to give the Sessions Jurisdiction, *pl.* 407.—Notice of Appeal, *pl.* 409.—Who may Appeal, *pl.* 411.—To what Sessions, *pl.* 414.—Of the Authority of Borough Sessions, *pl.* 420.—General Authority of the Quarter-Sessions, with regard to Orders of Removal, *pl.* 423.—Authority of the Sessions in amending Orders of Justices, *pl.* 433.—Adjournment of an Appeal, and of the Sessions, *pl.* 434.—Court equally divided, *pl.* 443.—Power of the Sessions over their own Orders, *pl.* 445.—Of special Orders, *pl.* 446.—Of the Effect of the Determination of an Appeal, *pl.* 453.—Of Orders of Removal subsequent to an Appeal, *pl.* 458.—Parish appealing, and the Sessions determining the Appeal being in different Counties, *pl.* 466.—Pauper returning to the Parish, which is not the Place of his Settlement, *pl.* 467.—Returned, *pl.* 470.—Costs, *pl.* 471.—Certoari, *pl.* 471.—Of Persons having no Settlement, or whose Settlement is unknown, *pl.* 475.—

404. *R. v. Chipping Farringdon, T. 12 W. 3. 2. Salt*
48. *J. S.* was removed by order of two Justices from the parish of *A.* in *Warwickshire* to *Chalbury* in *Oxfordshire*, and from thence by order of two Justices to *Chipping Farringdon* in *Berkshire*. It was objected, that *Chalbury* ought to have appealed. *Holt Ch. J.* declared, that sending the poor man to a third place is falsifying the first order, which cannot be done but by appeal; for the order of two Justices is a determination of the right,

If a pauper is removed by order of Justices, he cannot be removed to a third place without an appeal.

Appeal to the Sessions.

against all persons till it be reversed; therefore the order was quashed.

Order of removal unappealed from is final.

405. *Malendine and Hunsdon, H. 12 Ann. Fol. 316.* Two Justices on the 29 June 1712, remove a pauper to *Hunsdon*, and two Justices there sent him back by an order to *Malendine*, on the 24 July, which was confirmed upon the appeal of *Malendine* at the sessions. The court now quashed the order of the 24 July, because they ought to have appealed, and not to have sent the pauper back; and held the order of the first two Justices good, because there was no appeal from it.

Pauper is removed from A. to B. which appeals, but before the appeal can be heard, A. takes back the pauper and removes them by order of Justices to a third place.

See the preceding ch. title Authority of Justices respecting the settlements of the poor.

406. *R. v. Lanbydel, H. 10 G. 3.* Motion to quash an order of sessions, quashing an order of two Justices for the removal of paupers from *Lanbydel* to *Denbigh*, in com. *Denbigh*, and to confirm the original order of the Justices. Case: Two Justices in 1768 remove paupers from *Lanbydel* to *Ruthen*, where they are maintained for some time, and afterwards, at the joint expence of both parishes, notice of appeal was served on the officers of *Lanbydel*; on the morning of the sessions previous to the filing the said appeal, the officers of *Lanbydel* consent to take back the said paupers. On the 10 January 1769, *Lanbydel* removed the paupers, by order of Justices to *Denbigh*, and on appeal, the sessions were of opinion, that the settlement of the paupers was in *Denbigh*; but it appearing in evidence, that the first removal to *Ruthen* was unappealed from, the second order of removal to *Denbigh*, was quashed. The court was of opinion, that though an order unappealed from is final, yet this is to be understood of a subsisting one, and therefore the sessions have wrongly applied this rule to an order, which being found to be wrong was by consent of both parties abandoned, and the paupers taken back, and therefore may be considered as having never existed. See pl. 437.

Appeal necessary to give the Sessions Jurisdiction.

407. Where the sessions quash an order it must appear to be on appeal. 2 Salk. 479.

Order of sessions confirming an order of Justices, must be made on appeal.

408. *Godalming and St. Michael's in Winchester, 14 G. 2. Barr. S. C. 278.* The order of sessions confirming the original order of the first of December 1740, was quashed, because not made on appeal, for which reason it was agreed by the court and counsel to be void.

Notice

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Notice of Appeal.

409. Sessions may dismiss an appeal for want of such notice as their practice requires, which was six days in the present instance: *Stra.* 315. But See the next *pl.*

410. *T. 10 G. Feb.* 261. The sessions quashed an order of Justices, and assigned for a reason, that there was not due notice given of the appeal, pursuant to the act 9 G. *Per Cur.* The order of sessions must be quashed, because due notice not being given was no reason to quash the order of two Justices, but might be a reason to adjourn the appeal.

Who may Appeal.

411. *R. v. Hartfield, E. 4 W. & M. Carth.* 221. Two Pauper removed Justices of the Peace made an order to remove *Nicholas* may appeal.

Wells from the parish of *Hartfield* to the parish of *Eramfield*, from which order *Wells*, though party himself, and not the parish, appealed, and thereupon the sessions made an order to return him to the parish of *Hartfield* from whence he was removed, but they did not by any express words vacate the first order. It was now objected, that the party himself cannot appeal, because the appeal is given only to the parish aggrieved, and not to the party removed: But the court held, that the party may appeal as well as the parish.

2. The next exception was, that this is an original order of sessions; and besides it does not vacate the first order. The sessions is only to vacate or affirm the first orders, and not to make a new order. And *Holt Ch. J.* was of this opinion, but two Judges against him, for that the sessions order doth vacate the order of the two Justices by implication, because it orders the contrary, and that is sufficient in this case; and upon their opinion the order was confirmed.

412. *R. v. Burcot, H. 12 Ann. Pair Sett.* 25. The order of sessions confirm the original order; and began thus: Upon hearing the appeal of *Burcot*—*Mr. Lechmere*: The parish itself cannot appeal, but the inhabitants; so it is nonsense and an absurdity: But it must be intended the parishioners, and can have no other intendment.

413. *R. v. Almanbury T. 4 G. Str.* 96. An order of Justices is quashed at the sessions upon appeal, without saying at the appeal of the party grieved: And this was objected in order to quash the order of sessions, and

Appeal to the Sessions.

upon the appeal
of the party
grieved,

compared to the case of a complaint, that a man is likely to become chargeable; which has been held ill, because the complaint must be to the churchwardens and overseers. And the case of *R. v. Sir Thomas Putt* was cited: Inquisition at sessions *coram A. & aliis sociis suis* was held ill, for there must be two, and nothing is presumed in a limited jurisdiction. And the court here inclined to quash the order for this fault, till they were informed the precedents were most of them so, and for that reason, and that only, the Ch. J. declared the order was confirmed. *Yelv. 120. See Vin. Abr. Tit. Sess. 341.*

To what Sessions.

414. *R. v. Hinderclay, Vin. Abr. Tit. Sess. 356.* An order made at the general quarter sessions held by adjournment was quashed, because it did not appear that this was the next general quarter sessions; for it might be that the sessions was begun, and continued by adjournment, before the order was made.

Order of Jus-
tices is made af-
ter the sessions
is begun, and
on a day prior to
that to which
the sessions was
adjourned.

415. *R. v. Monks Risborough, H. 11 Ann. MSS.* The sessions was held on the 5 October, and was adjourned to the 19th; on the intermediate 10th day of October an order of removal was made: Appeal was made to the adjourned sessions. Question was, whether this was the next sessions within the act. The whole court agreed, that if an order is made before, and not served till after a sessions, the sessions next after the service of the order is the next sessions within the act. *Parker Ch. J.* said, he took this to be well enough, and that he could not distinguish it from a person's taking the oaths the same term on which he took a place; which had been allowed by *Ch. J. Holt*. *Byrt J.* differed, and adjourned.

Appeal must be
to the next ses-
sions after ser-
vice of the order.

416. *Millbrook and St. John's in Southampton, 1 G. 1. Poers Sett. 68.* A person is removed from Millbrook to St. John's, by an order bearing date 12 day of February, and they appeal to the Trinity sessions: Now Mr. Cross moved to quash the order, there appearing to be an intervening sessions, and so not within the act of parliament. *Parker Ch. J.* You cannot take this objection now; it is matter of fact, and perhaps the order was not served till after the sessions: You should have made this objection then; it is too late to make it now. Confirmed.

Appeal is to be to
the next sessions
after the grie-
vance.

417. *R. v. Norton. E. 2 G. 2. 2 Str. 831.* Exception to an order of sessions for discharging an order of removal, because the Justices order was dated the 21st of June, and the sessions order was not made till the

Michaelmas

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Michaelmas sessions following, so that *Midsummer* sessions intervened between making the order of Justices and the order of sessions. To this it was answered, that by the express words of the statute the appeal is to be the next sessions after the parties find them aggrieved, which is not till the removal: And for ought that appears, *Michaelmas* sessions might be the next after the grievance: And that so it was held in the case of the parish of *St. John's* and *Millbrook*, *M. 1 G. 1.* To which the court agreed; and the order was affirmed.

418. *R. v. West Torrington*, *T. 22 & 23 G. 2. Burr.* Appeal must be remembered that the general quarter sessions of the peace, *S. C. 293.* The record proceeds in these words, Be it to next sessions. *S. C.* was held by proclamation at *Kirkton*, in and for, *Sc.* on *Monday* the 9th of *January*, *Sc.* and from thence adjourned to *Caister* in the said parts and county to *Wednesday* the 7th, *Sc.* where there was then no sessions held pursuant to the said adjournment, and that at the general, *Sc.* held at *Horncastle* in and for, *Sc.* on, *Sc.* before, *Sc.* Appeal to this court, *Sc.* There were two objections taken, First, that the sessions at *Horncastle* could not take it up at all, for want of jurisdiction; being held without adjournment; and Secondly, That the appeal is not made to the next quarter sessions. To these it was answered, that it does not appear before what Justices the sessions at *Kirkton* were held, and none being held at *Caister*, this at *Horncastle* was the next, and an original sessions, the others being null in law. To these objections *Mr. Wilmot* replied, That the statute of 36 *Edw. 3. c. 12.* expressly directs four sessions only to be held in a year; that the 12 *R. c. 10.* directs one in each quarter of a year at least; and that the 2 *H. 5. St. 1. c. 4.* specifies the times of holding them, viz. in the first week after *Michaelmas*, in the first week after *Epiphany*, in the first week after *Easter* and the first week after the translation of *St. Thomas*; and more often if need be. He observed that this appears to be a general quarter sessions held originally at *K.* and an adjournment from thence to *Caister* (where no sessions was held) and that the third at *Horncastle* mentions no adjournment from any former sessions. Lord Ch. J. *Lee* asked if there was any case to shew that it was necessary, in a session only for the purpose of adjournment, to name the Justices before whom it was holden? If the first session was well holden, the session was completed if there was no adjournment of it from thence to *Horncastle*. And the case of *Polstead* is in point. Order of sessions quashed, and the original order confirmed.

At what time and how often the sessions are to be held.

Appeal to the Sessions.

Order was made four days before the sessions, which lasted three days, the contending parties being ten miles distance from one another and the party complaining was eight miles only from the sessions.

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419. *R. v. Justices of Wilts*, T. 12 G. 3. Mr. *Morris* moved for a *Mandamus* to be directed to the Justices, to receive and hear an appeal to quash an order of removal. Mr. Serjeant *Burland* and Mr. *Widmore* against the *Mandamus*, insisted that as the order was made four days before the sessions, and the sessions lasted three days more, the parties were bound to have appealed at the sessions next following the order of removal; especially as the two contending parties were not more than ten miles from each other, and the place of the sessions not above eight miles distant from the party complaining: That at least they ought to have entered their appeal and adjourned it agreeable to the mode prescribed by 13 & 14 Car. 2. They admitted that cases may be put where the sessions were at liberty to receive and hear the appeal, after the sessions next ensuing the order of removal. But that here the parish-officers have been guilty of laches and neglect, and therefore ought not to be favoured or assisted. Mr. *Morris* on the other side insisted, that the present was as favourable as any case could be for the assistance of the court; for there was great reason to believe that the parties removing had ensnared or compelled the pauper to marry a woman whilst he was under age. That he obtained a licence, and was as he supposed prevailed upon to do so, when he was not of age; that his father swore he was under age, which strengthened this suspicion; that here was not a reasonable time for the parties to inquire into the facts, in order to judge of the propriety of appealing; that the act of the parish is merely directory, and the sessions were not bound to refuse an appeal, because not made at the sessions immediately following the order of removal: That the court will always intend the appeal to be in time (if possible) as appears by *Stade* and *North Bradly in Strange*; at least they will never assist in presuming the limitation mentioned by the act, to be incurred where they can help it. Lord *Mansfield*: The single question is, whether the sessions have done wrong in admitting the excuse offered, for not appealing at the next sessions, after the order of removal, for all the facts of imputation thrown out against the removing parties are out of the case. Whether there is sufficient time for not appealing, must depend upon the facts of every case; here the two contending parishes, and the place where the sessions were held, were within ten miles or thereabouts: it is said the parish wanted to know if the wife of the pauper was settled

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settled with him, which depended upon the age of Mary a fact they might have known in less than half an hour; besides what is the case they desire to be let in to prove? Not a favourable one, but the reverse; it is, that the father may be at liberty to swear against the son and prove him perjured, which I would never suffer to be done! Here the parish officers were very negligent. The court was unanimous for discharging the rule for the *Mandamus*. Rule discharged.

Borough Sessions.

420. *R. v. Wendover, E. 13 W. 3. 2 Salk. 400.* Pauper is removed by two Justices of *St. Albans* from *Watford* to *Wendover*, and upon appeal to the sessions at *St. Albans* the order was confirmed. *Curia*. The appeal ought to have been to the sessions of the county, not of the corporation. It was *coram non judice*. See the statute 8 & 9 *W. 3. c. 30. s. 8.*

Appeal cannot be to the sessions at *St. Albans* from an order made by Justices of *St. Albans* of a pauper from *Y.* to *Z.*

421. *R. v. Malden, M. 11 Ann. Poor Sett. 10.* Lord Ch. J. *Parker*: Where there is a town corporate, and the Justices there have a sessions of their own, and the Justices in that town make an order there, the appeal must be to the country sessions, not their own; otherwise there would be an appeal *ad eodem ad eundem*; there may be the same Justices sitting who made the order.

Appeal must be to country sessions.

422. *R. v. Inhabitants of East Donyland, T. 8 G. 3. 2 Burr. S. C. 592.* Two Justices of and for the borough of *Colchester* removed the children of *J. G.* from the parish of *St. Giles* in *Colchester* to *East Donyland* in *Essex*, which appeals to the quarter sessions of the borough of *Colchester*, where the order of the Justices is confirmed. These orders being removed by *certiorari*, the court gave no opinion upon the merits, but agreed that the borough sessions had no jurisdiction to make this order of confirmation; that the appeal ought to have been to the quarter sessions of the county, and that as no such appeal has been made, the original order stands.

Borough sessions have no authority in cases of removals.

General Authority of the Sessions with regard to Orders of Removal.

423. *R. v. Bond, M. 2 Y. 2. 2 Show. 503.* The sessions cannot make an original order for the removal of a poor person. The sessions have power to inquire into the boundaries

boundaries of a parish concerning settlements. *Poor's Settlements* 14. *R. v. St. Nicholas, MSS.* Sessions cannot make an original order for relief of a pauper. *See* the 3^d & 4th *W. & M.* c. 11. s. 10. May quash an order for defect of authority in the Justices. *St. v.* 300. Sessions cannot commit for nonpayment of fees of their officers. *Lord Raym.* 703. Order of sessions quashed because it concerned one of the Justices named in the style of the court. 2 *Salk.* 607.

Sessions cannot appoint a new place of settlement.

See pl. 426 & 431.

An order may be confirmed in part and quashed in part; in *B. R.*

Order of removal by Justices of a pauper to *A.* made upon hearing the parish of *A. B.* and *C.* was quashed at the sessions, and the pauper ordered to be settled at *C.*

424. *Harris's case, Comb.* 286. An order was made at the sessions that an order of two Justices touching the settlement of *A.* be discharged, and that *A.* be settled at *B.* *Cur.* They can only discharge the order of two Justices, therefore let that part be confirmed, but they could not appoint a new place of settlement; therefore let that part be quashed; for the court may confirm in part, and quash in part, as is frequently done in orders touching bastard children.

425. *R. v. Colliton, P. 4 W. & M. Carth.* 221. Order of Justices reciting that upon hearing the parishioners of *Honiton, Axmister* and *Colliton*, concerning the last settlement of one *Hurley* then living at *Honiton*, it appeared to them that he was legally settled at *Axmister*, to which place they ordered him to be removed, upon the appeal of *Axmister*, was quashed at the quarter sessions, where it was farther ordered that *Hurley* should be removed to *Colliton*, but the order did not recite that *Colliton* was heard upon the appeal. First exception, That it is an original order by which *Colliton* is deprived of the appeal given by statute, and in case the pauper could be proved to have a later settlement in any parish whatsoever, this order being positive leaves *Colliton* without remedy. 2dly, That it did not appear by either of the orders that the man was likely to be chargeable to the parish. Another exception was that the style was *ad generalem sessionem*, omitting *quarterialem*. *Per Cur.* *Colliton* was a party to the first order, and consequently to the appeal, and therefore before the sessions, who made an order grounded on a complaint concerning a settlement by an order of Justices, and thereby it shall be intended, that *Hurley* was likely to be chargeable on account of the controversy. In an original order it must appear that the pauper was likely to be chargeable, but here the original order was vacated, and therefore it cannot concern *Colliton*. With regard to the style of the sessions, precedents are both ways

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ways and nearly equal in number. V. *Salk.* 474, 476.

Order of sessions affirmed.

426. *R. v. Cockfield*, H. 8 W. 3, 2 *Salk.* 477. *He* was removed by order of Justices from *Cockfield* to *Borestead*, which upon appeal was confirmed at the sessions, but the sessions after that made an order of review, and quashed the former order of sessions, because made by surprise. *Per Cur.* The order of review must be quashed, for the Justices have no power after the first sessions. *Comb.* 418.

427. *R. v. Amher*, 8 W. 3, 2 *Salk.* 475. Two Justices removed *A.* from *Torrent Kanton* to *Torrent Crawford*, who appealed to the sessions, where it was stated that in appearing to the sessions that *A.* was last legally settled at *Amher*, they discharge *Torrent Crawford*, and order him to be removed to *Amher*. The order of sessions was quashed, because this was to make an original order, which in this case is not in their power to do; they might reverse the first order, and order the party to be carried back to *T. K.* but could not remove him to *Amher*, who was no ways concerned in the order or appeal; and if they are really chargeable with *A.* he must be removed there at the complaint of *T. K.* to two Justices of Peace. See *Comb.* 286, 396.

428. *Case of the parishes of Osuell and Woking*, E. 8 W. 3, 2 *Salk.* 472. An order was made upon appeal, setting forth that by the order of two Justices, upon a controversy before them, between the parishes of *Woking* and *Osuell*, a poor person was removed to *Osuell*, and that upon complaint of the churchwardens of *Osuell*, the sessions ordered their order to be superseded, and that the person should be removed to *Woking* aforesaid; and it was objected that the act of parliament only gives the sessions power to affirm or quash; but not to supersede an order or to suspend it for a time, and that the case before them being for the parish of *Woking*, an order was made by them upon another parish not concerned, viz. *Woking*, must be void, and that the word aforesaid would not help it, because *Osuell* was the parish last mentioned. *Per Cur.* Superseding is not a proper word, for there is a difference between a supersedeas and a repeal. A commission of *oyer & terminer* that is superseded may be revived by a *procedendo* without granting a new commission, but that cannot be in the case of a repeal, though this word is commonly used by Justices upon such occasions; and then there is a plain difference

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ence between *Waking* and *Woking*, for by what appears there may be two distinct parishes. But no judgment was given, for the cause was referred to a Judge of assize.

Order to continue till sessions

429. *Bratton and Ufley, H. 13 Anne, Poors Sett. 33.* The Justices make an order which is to continue till sessions, and then the sessions makes an order, and both the orders were quashed. 1st, They have no such power to make an order till sessions. 2dly, The sessions making an original order is void likewise.

If the sessions adjudge fraud, the court of K. B. is bound by that adjudication; but if the sessions state facts particularly and fully, the court of K. B. may draw conclusions from them, different from the inference of the sessions.

430. *R. v. Tedford, T. 8 & 9 G. 2. Burr. S. C. 57.* P. G. contracted with J. A. for an house and curtilage in *Waddingham* for 39*l.* which was conveyed to F. G. and his heirs accordingly. He paid 9*l.* and J. B. paid 30*l.* to J. A. by the order of F. G. About six weeks after the date, and one month after the execution of the conveyance F. G. mortgaged the premises to J. B. by demise for a thousand years, to be void on payment of the money in a year. F. G. continued in possession about four years after the said mortgage, when J. B. entered upon a release of the equity of redemption. The order of sessions recites that the Judges of assize had not time to determine it, and that the parties agreed this to be a true state of the case, and then proceed thus, "Now upon hearing counsel, and further evidence on both sides, this court doth declare and adjudge, that the purchase was fraudulent." It was held by the court that this purchase was not within the 9 G. 1. c. 7. that the case above stated contains the whole of the facts, that appeared before the sessions; that the further evidence mentioned relates only to the same, not new facts; and that they did not warrant the conclusion, that the purchase was fraudulent; that if the Justices state the facts particularly and fully, it is the province of this court to draw the conclusions from them; that if the sessions had adjudged this a fraudulent settlement generally, this court might have been bound by their adjudication; for they are judges of the fraud of a purchase, with regard to its gaining a settlement.

Sessions are judges of the credibility of the evidence produced before them. Cannot be compelled to make a special order.

431. *R. v. Preston, E. 9 G. 2. Burr. S. C. 77. T. H.* was licensed by the ordinary to be schoolmaster of the free school of *Doresbury*, and became clerk of the parish chapel there, and officiated there for fourteen years to his death; the sessions were of opinion that he did not gain

gain

gain a settlement in *Dorbury*. A bill of exceptions was received and filed by the court of sessions. It was held by Mr. Justice *Probyn*, that the Justices at sessions are Judges of the credibility of the evidence heard by themselves. It was resolved that a bill of exceptions will not lie to this jurisdiction of the justices at sessions. But to prevent the determination of this case being produced as an authority for establishing the opinion which the sessions have here determined upon, the particular reason of the determination of the court was ordered to be inserted in the rule, which was "Upon mature deliberation had here in court; it is ordered that the order of sessions in this cause be affirmed; the court being of opinion that no bill of exceptions lies in this."—It was allowed by the court, that the sessions cannot be compelled to make a special order against their will; but that it is highly blameable in them not to do so, when they are requested, and the matter is doubtful. See *R. v. Dalton*, *M. 9 G. 2 Burr. S. C. 64.*

432. *Case of the parishes of Road and North Bradley*, *T. 15 G. 2. 2 Sir. 1168.* Pauper was removed from *Road* to *North Bradley*, which gave notice of appeal; upon which *Road* took him back, but got their order confirmed at the sessions. The next sessions set both aside as fraudulent. And now *Road* insisted that the order was good, as not being appealed from at the next quarter sessions. And that it was not in the power of one sessions to set aside the act of the other. All being now before the court, they quashed the order of justices, as being properly quashable on appeal, and would not take notice that it was not at the next sessions after service of the order; which being in the case of a recent appeal, they would suppose to have been served too late for an appeal to the next sessions. As to the order of confirmation they quashed that, as not having been made on any appeal and consequently without jurisdiction, and at the same time quashed the latter part of the second sessions order, that rescinded that confirmation as not being properly before them. *Vin. Abr. Tit. Rem. 468.*

Authority of the Sessions to amend Orders of Removal. See *5 G. 2. c. 19.*

433. *The King against the Inhabitants of Harrow on the Hill*, *MSS. 2.* An order of Justices was made for the

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the removal of a man and his wife and two children, from the parish of *Luggershall* to the parish of *Harrow*, upon an adjudication that the settlement is in *Luggershall*, and the Justices order them to be carried to *Harrow*. Upon appeal to the sessions this order was confirmed and amended, by striking out *Luggershall* and inserting *Harrow*. It was moved to quash those orders, for that the judgment being defective it cannot be altered; and though by 4 G. 2. Justices at sessions have power upon appeal to amend any defects of form that shall be found in any order, yet this is a defect in substance, and therefore not amendable. *Cur.* Seemed to be of opinion it was only a defect in form, being a mistake of the clerk who filled up the blank order with the name of *Luggershall* instead of *Harrow*; but they granted a rule to shew cause, and in *Trin.* term following the order of sessions was confirmed by consent. See *R. v. Great Bedwin*.

Adjournment of an Appeal and of the Sessions.

An appeal may be adjourned at the sessions.

434. *Case of the parish of King's Langley, T. 11 W. 13. Lord Raym.* 481. Exception was taken to an order of the sessions upon appeal from an order of removal, that the appeal was lodged at the next quarter sessions after the order of removal was made; but it appears upon the face of the order of sessions, that the appeal was not then determined, but adjourned over for farther consideration; and it was held by the whole court, that they might well adjourn an appeal upon debate for further consideration. 2 *Salk.* 605. 5 *Mod.* 329.

To what time.

435. *R. v. Grince, T. 4 G. Vin. Abr. Tit. Seff.* The adjournment of a sessions is not to be to a time beyond that fixed by 2 H. 5. c. 4. for the holding another original sessions.

Upon orders made at adjourned sessions, it must appear upon what day the original sessions begun.

436. Exception was taken to an order of sessions, that it is said to be made at a sessions held by adjournment such a day; and does not shew that the sessions commenced within the time prescribed by the act: it should have been *ad sessionem inchoatam* such a day, and held by adjournment after; and for this fault the order of sessions was quashed. 2 *Str.* 832. The same rule holds with respect to indictments at adjourned sessions. 2 *Str.* 865.

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437. *R. v. Harrowby and Rawby, E. 10 G. 2. Burr.* Appeal to an adjourned sessions where the order is confirmed, but did not appear where the original sessions was held. See *R. v. Heptonstall, Burr. S. C. 81.*
S. C. 103. Two Justices make an order of removal on the 13th January 1736. Which, upon appeal to an adjourned sessions holden the 4th of May following, was confirmed; but it did not appear when the original sessions was held. Intermediately (on the 20 April) two Justices (one of whom was the same person who made it) called in the first order, and made another by which they removed the pauper to a third place. Upon appeal from this latter order, the sessions adjourned all proceedings to the next following sessions. *Per Cur.* The second order made by the two Justices is irregular, as being made pending the first, and before any appeal, and without shewing any subsequent settlement to have been gained. All that was done upon that second order therefore is out of the case. But the first order has had no objection at all made to it, and then though the confirmation of it at sessions be invalid, because it does not appear when the original sessions were holden, yet the first order itself must be confirmed, and all the others quashed.

438. *R. v. Heidingbamt Sible, T. 10 & 11 G. 2. Burr.* Upon a reference to a Judge there must be a proper adjournment.
S. C. 112. If a reference is made by the sessions to a Judge of assize, unless they continue the appeal by a proper adjournment, reserving the determination to themselves, it is a discontinuance and they cannot take up the matter again.

439. *R. v. Stansfield, E. 16 G. 2. Burr. S. C. 205.* Two Justices by an order, dated 12 April 1742, remove *J. B. &c.* from the township of *Stansfield* in the parish of *Heptonstall* in *Yorkshire*, to the township of *Spotland* in *Lancashire*, which they adjudge to be their legal settlement. The *Pontefract* sessions held the 27 April, 15 G. 2. upon appeal, order the said appeal to be respite to the next general quarter sessions to be holden by adjournment at *Bradford*, in and for the said riding; and that the churchwardens and overseers of *Stansfield*, the appellants, do on notice of this order pay or cause to be paid to the churchwardens and overseers of *Spotland*, the sum of four guineas for costs of the said appeal. The points which sessions may adjourn an appeal to an adjourned sessions, but cannot give costs upon a mere adjournment of an appeal. A *país* warrant unappealed from is not conclusive as
 were determined in this very complicate case were 1st, That the sessions appealed to from an order of Justices may adjourn the appeal to an adjourned sessions, (*viz.* to the next general quarter sessions to be holden by adjournment at *B.*) but that they cannot give costs upon a mere adjournment of the appeal without hearing it; for costs upon

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to the gaining a settlement.

upon an appeal must depend on the determination of the merit of it. *V. 8 & 9 W. 3. c. 30. s. 3.* The second point determined was, that a pais warrant unappealed from, has not the same conclusive effect as to gaining a settlement, that an original order of two Justices unappealed from shall have; the *13 G. 2. c. 24. s. 7.* for passing, had a different view from that of *13 & 14 Ch. 2.* for fixing settlements.—The same resolution in *R. v. Upmerden* the same term, that paises are only intended to prevent vagrancy, and the place of the last legal settlement remains to be determined afterwards.

If there are not a sufficient number of Justices to adjourn the sessions;

440. *R. v. Polsted, H. 20 G. 2. 2 Stra. 1263.* Appeal was made to the quarter sessions in *Suffolk*, held 7th April 1756, against an order of removal: The sessions was adjourned to 9th of April at *Woodbridge*, where, for want of a sufficient number of Justices nothing could be done. The 11th April a sessions is held at *Ipswich*, and adjourned to the 14th at *Bury*, where the appeal was allowed. The order of sessions was quashed, being made without jurisdiction for want of an adjournment at *Woodbridge*.

Two Justices necessary to adjourn a sessions.

441. *H. 20 G. 2. MSS.* If there are not Justices enough to hold a sessions, there are not enough to adjourn it legally, and every act done after such an adjournment is void. Same resolution in *R. v. Westerington, 23 G. 2. MSS.* See *St. 20 G. 2.*

442. *R. v. Justices of Westmorland, H. 29 G. 2. MSS. 2.* Mr. Norton shewed cause against a rule obtained by Mr. Gould, for a *Mandamus* to the Justices of *Westmorland*, to proceed to hear and determine an appeal from an order of two Justices, removing a pauper from *Abbey Leonard* to *Crosby Ravensworth*. If there is an appeal to a quarter sessions, and nothing done at that sessions, I apprehend the appeal falls to the ground, the order is of course confirmed, and the Justices cannot at a future sessions resume it: It is a discontinuance of the suit which is then absolutely at an end. It has been formerly doubted, *2 Sal. 605*, whether the Justices could adjourn an appeal at all; nobody ever dreamed then that without an adjournment it could be taken up at a future sessions. At *Christmas* sessions 1754 there was a hearing on this appeal; but differences arising, and the Justices having doubts, there was a reference for the opinion of the Judges, who should come the next northern circuit. I apprehend the Justices had no power to make such an order of reference, at least not without consent of parties.

ties. This was not merely a reference to the Judges with a view of having their advice, but an absolute resignation of their power by the Justices to the two Judges, by whose opinion the matter was to be absolutely determined. Such a reference I apprehend they had not power to direct, *R. v. Harvey*, 2 Salk. 477. It was a part of the order that the appellants should draw up their case against the next *Easter* sessions. They did not. At *Midsummer* sessions the appellants came, and at the assizes the parties producing different states of the case, the Judges did nothing in it. The court inclined to grant the *Mandamus*, if the Justices would not proceed but enlarged the rule for further consideration.

Court equally divided.

443. *Case of Thornby and Fleetward*, T. 6 G. Str. 383. Upon a writ of error in the *King's Bench*, against a judgment given in the court of *Common Pleas*; the court was equally divided. After consideration of several expedients, the parties at last consented that the judgment should be affirmed, that the case might by that means come before the House of Lords for a final determination. And *Pratt* Ch. J. delivering the opinion of the court, said, that the court being divided there could be no rule; but the party against whom it is to be affirmed being willing and desirous that it should be so, we are all of opinion that upon his consent the judgment of the *Common Pleas* may be affirmed. But lest this be brought in future ages, as a precedent of an affirmance upon a division, we direct the officer to make the rule special in this case, on recital of the difference in opinion amongst the Judges, and consent of the party.

444. *Bodmin v. Warlign*, M. 23 G. 2. MSS. On appeal to the sessions from an order of removal, there being only two Justices, and they divided in opinion, no order was made, but an entry by the clerk of the peace that the appeal was lodged, and nothing done in it. One of the parishes gave fresh notice of appeal to the next sessions, when the Justices proceeded in it, and quashed the order. *Per Cur.* The difficulty arises from the penning the entry by the clerk of the peace; if they were divided equally in opinion, that was a sufficient warrant for the clerk of the peace to have entered an adjournment, and it was his duty so to have done. If the parties

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parties will not consent to quash both orders, we will consider whether we cannot send it down to have the entry of the first order amended; and in this term 24 G. 2. rule was made absolute for quashing, because made without adjournment; but no opinion given.

Power of Sessions over their own Orders.

Sessions may alter their judgment: if the same sessions make two orders one vacating the other, the last only ought to be returned upon a certiorari.

445. *St. Andrew's Holborn and St. Clement's Danes, M. 3 Anne, 2 Salk. 494.* The court of quarter sessions of *Middlesex* made an order, which they vacated by a subsequent order the same sessions, and both orders were returned upon a *certiorari*. *Holt Ch. J.* Only the later order should have been returned. If the Judges of this court disliking our judgment, should the same term make an entry of two different judgments, we ought not to return both upon a writ of error. The sessions is all one day, and the Justices may alter their judgment at any time while it continues. 6 *Mod.* 287.

Special Orders.

Sessions must not make a special conclusion referring to the opinion of the court of K. B.

446. *Anonymous H. 11 W. 3. 2. Salk. 486.* Order of sessions drawn up specially, in order to have the opinion of the court concluded; and if the court should be of opinion, then, &c. and it was held not good; for the Justices ought to determine one way or the other, and not make a special conclusion referring to the opinion of the court.

Special orders are not to state the evidence of the facts, but the facts themselves.

447. *R. v. Martley, T. 11 & 12 G. 2. Burr. S. C. 120.* The pauper *S. B. musician*, and his wife, and children had been strollers and vagrants all their lives, had never gained any settlement; and the place of their births seemed very uncertain. However the sessions had not sufficiently stated the facts; they had stated only the evidence. The court therefore recommended it to the counsel on both sides, to consent that the order should go down again to be better stated. That this court could not judge of the place where the pauper was born. Special orders of sessions were considered; the court said, in the nature of special verdicts; which are not to state the evidence of the fact, but the fact itself.

448. *R. v. Hitcham, H. 33 G. 2.* The special case stated, That the pauper *Thomas Death* and *Anne* his wife, being

being settled at *Ringball* about 18 years ago, let himself for a year to *William Drath* his brother, who was a carpenter at *Hitcham*: That the brother was to pay him no wages, but to teach him the trade of a carpenter, and to find him meat, drink, washing and lodging; and the pauper was to do all his brother's business in the farming way, and was accordingly employed both as a carpenter and in the farm: That he served for a year accordingly. The sessions held that he gained a settlement by this at *Hitcham*. Mr. Norton moved in the *Michaelmas* term to quash the order of sessions; objecting, that the pauper appears to be a married man at the hiring, and could gain no settlement by it. Soon after, Mr. Norton who was for the parish of *Ringball*, moved to have the order amended or sent back to be restated on affidavit. That the pauper appeared on the appeal to be an unmarried man at the time of the hiring. That the words "and *Anne* his wife" were inserted by mistake, and the only question was, Whether the terms of the hiring were sufficient to gain a settlement; rule, &c. Mr. Norton on shewing cause, produced an affidavit, that the fact of his being married or unmarried at the hiring, did not appear either way in evidence; and urged, that the sessions orders returned were records not to be contradicted by affidavit. That it was unusual where the case was imperfectly stated, to send it back to be restated. It had never been done where the case was perfectly stated under a notion of any part of it being untrue. That it would be dangerous if witnesses were to be re-examined, and the case varied after it had been gone through; and without further examination the sessions could do nothing, as it might not be composed of the same Justices, or if it was, they might remember nothing of it, and as the fact of the mistake was disputed, the court would not amend or alter the case. The court said it was not proved at the appeal that the pauper was a married man at the time, which it was not on the affidavit against the rule pretended to be. It was to be presumed he was not; that the mistake alledged was a proper ground for sending back the case to be restated, if it should appear to be a mistake in that particular. It was accordingly sent down, and it appears not to have been proved that the pauper was or was not married. The words "and *Anne* his wife" were struck out. In *Trinity* term after, the defendants having entered into a recognizance to pay costs in case the matter was determined against them, and the court of quarter sessions having returned an amended case upon new

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evidence, Mr. *Sayer* moved to have it taken off the file, insisting, that the intention of the court in sending back the order could only be to have the facts which appeared in evidence, when the appeal was first heard, more fully stated, and not to let in the parties to give fresh evidence and prove new facts. But the court was of opinion, that the Justices had done right in re-examining the matter, and compared it to the case of a new trial. Mr. *Sayer* then moved that the recognizance might be discharged, as the order at first removed was not confirmed, though the new order was. Mr. *Morton* opposed it. The Ch. J. pronounced the rule, that this order being made upon new evidence the recognizance should be discharged. *Bury*. S. C. 489.

Upon an order
to restate a case,
the Justices
should proceed as
if it was an en-
tire new business.

449. *R. v. Page*, 5 G. 3. Order'd, that the order of sessions made for confirming an indenture of apprenticeship for binding a poor apprentice of the parish of *Ottery* in the county of *Somerset*, to defendant *Page*, be sent back to the sessions to be restated, and to state particularly whether the defendant is an occupier or only a bailiff. The defendant *Page* being a servant to serjeant *Wynn*, to take up his tithes, had a parish apprentice bound to him, against which he appealed, and at the hearing of the cause at the sessions, the counsel were dissatisfied with the opinion of the court, and therefore stated the case specially for the court of *King's Bench* to determine; but they stated evidence on both sides, and did not say whether *Page* was an occupier in his own right of the tithes, or whether he was a mere bailiff to serjeant *Wynn*; upon which the case was sent down to be restated, and the sessions, without hearing any evidence, stated that he was an occupier. The counsel for *Page* moved the court, that an order might be made directing the sessions to hear evidence, which was done accordingly in the following words. The court then ordered, that the order returned with the *Certiorari*, and also the last restated order returned hither respecting a rule of this court, be sent back to be restated, and to state whether, and how, and in what manner the defendant is an occupier of the tithes, and to hear evidence as to the fact. Mr. *Peter Taylor* was the only Justice who voted for hearing evidence. When the case was before the sessions the last time to be restated, and upon making the last order, the court approved highly of his conduct, and reſented in very strong terms the behaviour of the other Justices; saying, that if any one would

would move for an information against them, they would certainly grant it, and that they had no right to take any notice of what had passed before, for it was in the nature of a new trial, and they ought to have proceeded as if it was an entire new business.

450. *R. v. Justices of Suffex; M. 9. G. 3.* An appeal against an order of removal was regularly lodged at the *Michaelmas* sessions 1767, at *Petworth*, and the Justices upon hearing the cause conceiving a doubt, ordered a special case to be made for the opinion of the court of *King's Bench*. The counsel withdrew in order to settle the case, but before they had come to any agreement, the sessions was inadvertently adjourned, and this cause was neither retained nor ended. Upon these facts an application was made to the court of *King's Bench* for a *Mandamus* to compel the Justices to proceed in the appeal. By the court: When the Justices entertain a doubt, they may without the consent of the parties order a special case to be made. When the Justices say, as they did here, that a special case shall be made, they virtually say that the cause shall be adjourned over till a case is made; and therefore the want of an adjournment or a respite is merely the omission of the clerk, and may at any time be supplied. Let a *Mandamus* go immediately, unless the respondents will consent to a case.

By the direction of the sessions the counsel withdrew an order to settle a special case, but in the mean time the sessions was inadvertently adjourned.

451. *R. v. Bray; M. 10. G. 3.* The case stated, That two Justices removed *John Hunt* and *Elizabeth* his wife to the parish of *Bray*, which appealed against the order, but the Justices in sessions confirmed the order and stated the following facts for the decision of the court of *King's Bench*: That on *Thursday* before *Michaelmas* day 1767, the pauper *John Hunt* agreed with *John Lee* of the said parish of *Bray* farmer, as a carter to go into his service on the *Monday* following, until *Michaelmas* 1768, for six guineas: That at the time of the agreement, *John Lee* desired him to go into his service before *Monday*: That *John Hunt* said it would not suit him as he was then in service, and that *John Lee* replied, if he would come into his service on the said *Monday* morning he would shift till that time: That he went into his service on the *Monday* accordingly: That *Michaelmas* day was the *Saturday* next after the *Thursday* on which he made the agreement: That at the time of the agreement the pauper was in the service of *John Lewin* of *South Stoke* under a contract which expired on *Michaelmas* day 1767, which service he left on the night of the *Michaelmas* day 1767:

If a case is sent down to the sessions for them to draw a conclusion, it is not necessary for them to hear evidence again. See page 234.

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That he continued in the service of *John Lee* till the day before *Michaelmas* day 1768; when *John Hunt* desired leave of said *John Lee*, his master, to go to see his relations before he went to another service: That his master did deduct one shilling from his wages for that day, and paid him the residue: That he then went away, and returned no more into service of the said *John Lee*: That said *John Lee* on the pauper's going away told him, that if he quitted the service before *Michaelmas* day there might be a dispute about his settlement, and desired him to come back. *Mr. Impey* and *Mr. Mansfield* in support of the order of sessions insisted, That though the order was drawn up with a service to two persons, yet neither of them was a sufficient ground to rest on. The two questions are these, 1st. That there is a day wanting at the beginning of the year. Second, A day wanting at the latter end. As to the last objection, they contended that the absence of a day, in order for the servant to see his friends, is a reasonable occasion of absence, and shall not vitiate the service; and which was the ground of determination in the *King and Iship*: That the *King and Goodaston* is a strong case likewise on the same point; and the *King and Whitechurch* was determined in the same way, because there were no words of discharge made use of. The shilling being deducted is only an evidence that the pauper purchased his leave of absence, and does not prove a dissolution of the contract: That as to the first objection; the absence of the first day was dispensed with, and purged by being received into the service again: That the case of *Bishop's Hatfield* corresponds very much with the present: That all cases with regard to an insufficient hiring have been where the hiring has been after *Michaelmas* day, and could not by any reference be carried back to *Michaelmas*. *Mr. Dunning contra*: Whatever be the fate of the second question, the first ground is clear, and has its foundation in the provision of an act of parliament: That the court has never dispensed with any want of time at the beginning of the term: That the principle of the decision in *Bishop's Hatfield* cannot be impeached by the present case; but that the cases of *Westwood Hey* and *Comb*, and the *King* and *Smith Cernay*, are decisive against the opinion of the sessions on the last point: That the pauper chose the *Sunday* to be the day that he might command, and be *sui juris* on; it is certain he did not chuse the relation to commence till the *Monday*. The only difference of circumstance between this

this and those cases mentioned on the other side is this; that this is supposed to be a hiring two days before *Michaelmas*, for the servant to enter two days after; and there the servant hired two days after: But the criterion upon which this case is to receive judgment is, when the relation of master and servant was to begin, which was undoubtedly two days after *Michaelmas* day, being therefore an engagement for less than a year; neither law nor act of parliament can support it as a settlement. Mr. *Kirby* argued on the same side, that it was no settlement for want of one day's service at the end of the year: And that the case of *Jess* was not in any degree like the present, for there the servant wanted leave one day to go to hire himself at a fair three days before the end of the year, which he thought a reasonable request, and meaning to justify what the servant did, because the master ought to have permitted him to do it: They said, that his absenting himself with a view to go to the fair should not vitiate the settlement, for if his master had permitted him to go, he might have received him again two days into his service, and then it would have been within the rule of a dispensing of the service during the middle of the year: That the case of the *King* and *Whitechurch* was determined, because there were no words of discharge used; which imports, that if there were words of discharge the court would have held it a dissolution of the contract. Now in this case, words implying or proving most evidently that there had been a discharge were used; for the master desired the servant to come back, and sent to let him know the inconvenience of quitting his service. That as to the second objection, That the case of an exception for the harvest month, and an exception of *Sundays* are directly in point, that no diminution of the time which the act requires to constitute a settlement ought to be dispensed with: That if the intention of the parties is to explain the nature of the hiring, no stronger argument can be used than the conduct of the servant who went into the service on the *Monday* after *Michaelmas*, who is said to have entered into the service on that day *accordingly*; which word *accordingly*, must refer to something antecedent, and can be referred to nothing but the agreement or hiring, which appears to have been for the pauper to become a servant two days after *Michaelmas* day, and that he went into the service at that time, and according to that hiring. Lord *Mansfield*: One point is clear that there must be a hiring for a year;

now

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now the Justices have not found any hiring at all. If the court could draw any conclusion from the evidence, I should hold it to be a hiring for a year with a dispensation. This appears from the master's saying, he would shift until the *Monday*; and that the master understood it to be a hiring for a year there cannot be a moment's doubt, for otherwise, why tell him "he had better come back, as there might be some doubt about his settlement." There could be no doubt about his settlement if the hiring was for less than a year, although the service was not complete; for then the defect of hiring, and not the want of service, would have prevented any settlement. The last objection has no ground to stand, the servant purchased the dispensation. *J. Aston*: The sessions have only stated evidence, not facts; I think it should be sent back. If the sessions had stated it as a general hiring, it might have been taken to be a hiring for a year. It must be sent back. *Mr. J. Willes* and *Asbust* of the same opinion. This case was sent back to be restated. The Justices at the sessions refused to hear any evidence; but having the sessions order read to them, they said that they would draw the conclusion, and state that the pauper was hired for a year; upon which the counsel for *Bray* moved the court of *King's Bench*, that the order should be again sent back to be restated, and that the Justices should be directed to hear evidence; and a rule *nisi* was made upon shewing cause. *Mr. Dunning* and *Mr. Kirby* insisted in support of the rule, That the Justices ought to have heard evidence, because it was impossible for them to state facts without it; especially when three Justices who had not heard what passed at the former sessions were present, and the refusing the evidence was highly improper in this case, because the chairman and another Justice declined giving any opinion as to the manner of restating the case, merely because they had not heard any evidence, which fact was verified by affidavit, upon which the rule was made. That the doubt with the court when the order was sent back was, whether the man was hired on the *Monday* after *Michaelmas* day, or the *Thursday* before, which could not be stated without examination: That the sending back an order of sessions to be restated, is like a new trial, and was so considered by the court in two cases alluded to below: That the order restated, imports to be the order and opinion of them who refused to give any opinion, as well as those who had expressed their opinion that it ought to appear, that their opinion

was founded on evidence, the contrary whereof expressly appeared: That every member ought to be permitted to satisfy his own mind, and that the court of *King's Bench* has often supposed that one member or Judge of a court might have changed the opinion of the whole court, if he had been permitted to receive that information which he had a right to: That the order for retasting does always imply a rehearing; but particularly so in this case, the fact not having been ascertained by a standing to all the evidence which could settle it, and the rule was strongly pressed, upon the authority of *R. v. Page*, and *R. v. Hitcham*. Mr. *Impey* and Mr. *Mansfield* on the other side produced an affidavit stating, that no new evidence was offered to the court of quarter sessions: That the majority of Justices present were present at the former sessions when the evidence was gone into; and they contended, that there could be no new facts to examine any witnesses, for the only difficulty the court of *King's Bench* had, when the case was first stated, was, because the Justices had not drawn the conclusion from the evidence, which they the *King's Bench* could not do; and that therefore the case should be returned for the sessions to draw the conclusion, and to do that only, and not examine the evidence again: That it would be of bad consequence if they were to be permitted to re-examine the evidence, for it would be introductive of perjury, if the party having discovered the defect of their case was allowed to amend his cause, by re-instructing or galling a witness: That it would be particularly dangerous in the present case, for the pauper had sworn to an agreement on *Thursday* before *Michaelmas* day, and the view of examining afresh was to make him swear to a hiring two days after *Michaelmas* day: That it was probable he would be induced to contradict the evidence he had before given, because he had been in the possession and custody of the appellants, who could only wish to have him examined, had they imagined his evidence would differ from what he had before sworn to: That the orders in the *King* and *Page*, directed them to state in what manner he was bailiff: That in the *King* and *Hitcham*, the court was of opinion, that the fact of the marriage should be tried. Lord *Mansfield*: Here was no evidence offered, and I think it would be dangerous to examine the pauper again, after he had been in the custody, and under the influence of the appellants, and I therefore think the Justices have done extremely right, It has been compared to a new trial. It is and it

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is not like a new trial; here it is not like one, the Justices had nothing to do but to draw the conclusion, which we could not do; and about which, if I had heard the evidence I should have no doubt. Where the case is sent down for informality only they must not hear even new evidence; but here was no such fresh evidence tendered: To what purpose should the pauper have been examined? To say that he agreed two days after *Michaelmas*, when he had sworn to the agreement the *Thursday* before *Michaelmas*; that would be dangerous. In the cases referred to, evidence was necessarily examined to clear up the doubt about the facts; but here was no doubt as to the fact, but a conclusion was necessary to be drawn from the facts, which the Justices having done the question is at an end; for I never had any doubt of its being a hiring and service for a year: Here his lordship gave his reasons for thinking it a good hiring and service for a year, which were exactly the same as those advanced by Mr. Mansfield and Mr. Impey. The other Judges being of the same opinion with his lordship, the rule was discharged. Mr. Dunning then moved that the recognizance might be discharged, which the court, after hearing counsel on both sides, directed to be done.

452. *R. v. Nutley, E. 12 G. 3.* The parish of *Nutley* removed the paupers into the parish of *Bontworth*, *Nutley* attempted to support their order, by proving a hiring and a service in *Bontworth*, but the sessions being of opinion that no hiring was proved, quashed the order. But that opinion being not satisfactory, the counsel for *Nutley* desired a special case upon the ground of the hiring and service; the counsel on the other side, apprehensive that the *King's Bench* would be of another opinion, endeavoured to quash the order of removal, by proving before the Justices at sessions another hiring and service at *Asfield*, subsequent to that at *Bontworth*: But the Justices being of opinion, that the evidence produced was not admissible to prove the settlement, both points were stated for the opinion of the *King's Bench*, in the manner following: It appearing unto the court, that six weeks before *Michaelmas* about 34 or 35 years ago, one *John Page*, was hired in the presence of *Thomas Merrat*, since deceased (father of *John Merrat* the pauper; which said *John Merrat* is the husband of *Elizabeth*, and father of *John*, *William*, *Anne*, and *Richard*, mentioned in the order of removal) by *Thomas Smith* of the parish of *Bontworth*,

worth, to serve for a year the said *Thomas Smith*, as under carter to the said *Thomas Merrat*, when it was agreed, that the said *John Page* and *Thomas Merrat* should come into the service of the said *Thomas Smith*, on the day after *Michaelmas* day: Then with that the said *Page* and *Thomas Merrat* did accordingly go into the service of said *Thomas Smith*, on the day after *Michaelmas* day, and that the said *John Page* served the said *Thomas Smith* during the year as under carter to the said *Thomas Merrat*, and then said *Page* and *Thomas Merrat* left the service of the said *Smith*, and he, *Page*, received his year's wages: That *John Merrat* the pauper never acquired any settlement in his own right: That *Rachael* widow of said *Thomas Merrat* deposed, that her late husband, the *Michaelmas* day in the morning, after the said *Thomas Merrat* left the service of the said *Thomas Smith* of the parish of *Bontworth*, told her he had hired himself to farmer *John Smith* of the parish of *Ilfield*, and had likewise told her, that he went into the service of the said *John* in the parish of *Ilfield*, at *Michaelmas* in consequence of which hiring, and that he continued in his service until about a month before the *Michaelmas* following, at which time, viz. about a month before *Michaelmas* day, the said *Smith* turned him going; and he also told her, that he was so turned away because he should not gain a settlement in the parish of *Ilfield*; but did not tell her that the said *John* did give that or any other reason for turning him away: And the said *Rachael* further deposed, that she was married to the said *Thomas Merrat* at *Easter*, in the year in which he told her he was in the service of the said *John Smith*, and that she twice saw him during the said year in the service of the said *John*, and during that year until his being turned so away she considered him in the service of the said *John*: That so much of the said *Rachael Merrat's* evidence as related to the declarations of her husband, being considered by the court as a mere hearsay, was rejected as not being admissible evidence. This court is of opinion, and doth adjudge that the said recited order be quashed. Upon shewing cause why the order of sessions should not be quashed, it was contended by Mr. *Impey* and Mr. *Mansfield*: First, That the sessions having stated only evidence, and having thought that evidence insufficient to prove a hiring in *Bontworth*, the court could not infer the fact of it, when the sessions below thought the evidence did not prove it: That it is the province of the sessions, and not of the *King's Bench*, to draw conclusions from evidence. Secondly. That if the court should be of opinion, that the state

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state of the case would warrant an opinion, that a settlement was acquired in *Bontworth* by the hiring and service of the pauper's father in that parish, yet, that as *Bontworth* produced evidence to prove a subsequent settlement in *Ilisfield*, which was improperly rejected because hearsay, the court ought to send the case back to the sessions, and direct them to hear and receive the evidence of *Rachael Merrat*, as to the declarations of her husband: That such evidence ought to be admitted in a case circumstanced as present is, and that in fact it is the constant practice of other sessions, to receive such hearsay: That the case of *R. v. Inhabitants of Greenwich* in 1 Burr. S. C. came before the court of *King's Bench*, upon hearsay evidence only; That the court sent it back to the sessions for the single purpose of stating, where the pauper did in fact reside 40 days at *Greenwich*; the order having been stated only, that he might have resided there 40 days: That the court would not have sent it to the sessions, if they had not thought hearsay evidence admissible, that being the only evidence which could be had in the cause. Lord *Mansfield* interrupted Mr. *Dunning*, Mr. *Kirby* and Mr. *Grose*, in arguing that the sessions order ought to be quashed; and desired us to apply ourselves to prove that in the manner the points were stated, that the court could quash the order of sessions: For he said, he might have been of a different opinion from the sessions; yet as they thought the evidence upon the first part of the case did not amount to the proof of a hiring, which is a fact arising from evidence, he did not see how he could decide upon the evidence, it being the province of the Justices to draw conclusions from evidence, not the business of the court above: That secondly, the order ought to be sent down, because they had refused evidence, which they ought to have received. In answer to both these observations it was contended, first, That if the court was of opinion that the evidence which the sessions stated, and believed, amounted to a clear proof of a fact, which the sessions thought it did not, the court had a right to correct any improper conclusion of theirs, as well with respect to a fact arising from evidence, as from the resulting from fact: That if it were otherwise, great injustice would frequently be done: That it is essential to every appellat jurisdiction to correct every kind of error which inferior jurisdiction falls into: That if the sessions had disbelieved the evidence, the court then had no right to over-rule their opinion: The sending down the case could
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See *R. v Greenwich*.

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answer no use, if the court could not ultimately correct the opinion of the sessions upon this point, because the evidence must be the same, and the opinion of the Justices must be so too, consequently they would return the same case; and if the court could not correct their opinion, the court would clearly see a parish suffering injustice from the decision of a sessions; and yet would not, according to his lordship's opinion, be able to do them justice, by correcting the justices mistake. As to the second point, it was admitted that the evidence of the widow respecting the declarations of her husband was admissible; but it was insisted, that if there could be a good reason why the Justices did not think a subsequent settlement proved by that evidence, the court must presume that the sessions were influenced in their opinion by that reason, and not by any absurd one they happen to give, especially as they are not required to give any reasons for their decisions: That here was a good reason for not paying attention to that evidence, namely, that though the husband pretended a fraud in the master's turning him away, yet that was mere apprehension of his own at most, from which no fraud ought to be collected; or rather it was an apology he used to his wife for his having been turned away, well knowing that he had done something to deserve it: That in this case this sort of argument was well founded, because it was expressly stated that the master did not give that reason for turning him away; so that at best it was a groundless surmise of the servant, which by no means should have weight enough to prevail upon the court to believe a gross fraud had been committed by the master: That this being the case, the same argument was suggested as in the last point, namely, that it would be absurd to send down a case to the sessions to hear that evidence, which when heard ought to have no weight.—Without suffering any observations on the case of *Greenwich* cited on the other side, Lord *Mansfield* said he was satisfied that a clear hiring was proved, and that though the evidence rejected ought to be received, yet it would only produce more litigation and expence, and must have the same effect; he said he thought the order ought to be quash'd. Mr. *Aston* was clearly of the same opinion, and that to be sure the evidence of the woman ought to have been admitted, but standing alone ought to be taken as inconclusive, especially as the apprehension of the servant, as to the reason of his being turned away, did not appear to

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be well founded: That if the case was to be sent to the sessions for them to receive the evidence, and not conclude upon it as evidence of the hiring and service at *Ilfield*, which he thought they should not do, it would be productive of expence without any advantage, and he thought therefore the sessions order should be quashed. Mr. J. *Willes* absent, Mr. J. *Asburst* being of the same opinion, the rule was made absolute, and the sessions order quashed.

Effect of the determination of an Appeal.

Order of removal from A. to B. was quashed at the sessions, yet A. may remove to C.

453. *St. Michael Bedenham and Kingston-Bowsey, H. W. 3. 2 Salk. 486.* Order for the removal of J. S. from *St. M. Bedenham* to *Kingston Bowsey*, was on appeal quashed at the sessions. Then *Bedenham* obtained an order of Justices for his removal to *D.* and now a motion was made to quash this order, because the reversal upon appeal of the order of removal to *Kingston Bowsey* was conclusive upon the parish of *Bedenham*, against all the world. *Per cur.* The determination upon the appeal, between other parties, ought not to bind as to a third parish which was no party. 2 *Salk. 524 & 527.*

Order of removal from A. to B. is confirmed, B. cannot remove to C. without proving a settlement at C. subsequent to the appeal between A. and B.

454. *Swancomb and Shensfield, 1 Anne, 2 Salk. 492.* A poor man was removed by an order of Justices to *Shensfield*, which upon appeal was confirmed; afterwards *Shensfield* sends him by an order to *Swancomb*, which was quashed, because, by the confirmation of the order on the appeal, *Shensfield* was estopped against all the world to say that it was not the place of his last legal settlement; for the Justices cannot remove but to the place of his last legal settlement; and shewing any later place of settlement will discharge the order on the appeal, and the diversity is between an order discharged and an order confirmed, or not appealed from. In the first case the matter is at large, as to all places to which the pauper was sent, which, upon the appeal, was determined not to be the place of his last legal settlement. But in the latter cases, the place to which he was sent was bound, and the order is final and conclusive as to all parishes. 1 *Vent. 310. 5 Mod. 417. 6 Mod. 269, 217. 2 Salk. 527.*

455. *South Cadbury and Braddon, M. 9 Anne. 2 Salk. 605.* On an appeal to the sessions they discharge the order of Justices, and motion was now made to set aside the order of discharge, because the Justices in sessions do not say whether they discharge it for form or on the merits,

merits, for if it was for form, the parish is not bound, but if on the merits, the parish is discharged for ever. *Note the difference between affirming and reversing orders of Justices for form; and upon the merits.*
Per Cur. No courts are bound to express the reason of their judgment in the judgment, and if it was otherwise held in the time of the late Ch. J. (*Holt*) it passed without due consideration. The reason of their judgment must be collected from the record; as where judgment is arrested upon an insufficient indictment. If the sessions reverse the first order, and that being removed appears to be good, this court must intend, that it was reversed on the merits, and affirm the order of sessions. If the sessions reverse the first order, which on removal appears to be not good, we must intend that it was reversed for form, and affirm the order of sessions. If the sessions affirm the first order, and that appears to be good, we must affirm the order of sessions. But if the sessions affirm the first order, which on removal appears to be bad, this court must reverse the order of sessions, because it appears naught.

456. The sessions quashed the original order for insufficiency, when it was sufficient, and the order of sessions was now quashed for that reason. *Poor Sett.* 56.

457. *Moyer Hanger and Warden, H. 18 G. Poors Sett.* 160. If an order is quashed for form at the sessions which is a good order, and after they send the party back, yet the order being good it is final, and a bar to all subsequent settlements.

Orders of Removal subsequent to an Appeal.

458. *Thackham and Findon in Suffex. H. 12 W. 3. Salk.*
 489. A poor person was removed in 1694 from *West Starring* to *Findon*; *Findon* does not appeal; in 1700 the man comes to *Thackham*, and *Thackham* sends him by order of two Justices to *Findon*. *Findon* appeals, and the order was discharged. All three being now brought up by *Certiorari*, it was moved to quash the order made upon appeal, and urged that *Findon* was bound by the first order from *West Starring* to them, from which they never appealed, with respect to all the world, and are concluded to say that the place of his last legal settlement was not with them; but in respect to the distance of time the court could not tell, but he might have gained a new settlement at *Thackham*, and that might appear to the Justices, and they might have good ground to discharge the order of the two Justices. Then the council offered to produce

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an affidavit that there was no new settlement proved, but the court held, that they could not examine that by affidavit nor inquire thereby into the reason of making the order; *ex motione* Mr. Shelley.

If a pauper is upon appeal settled at A. if he is removed from thence by a subsequent order, it must appear that he had gained another settlement.

459. *Alderton and Felingtons*, M. 4 G. Vin. Abr. Rem. 467. Two Justices made an order, dated the 19th April, to remove a man from *Brandsay* to *Alderton*, which was set aside at the next sessions, upon the 1st of May next another order of two Justices was made for the removal of the said man from *Brandsay* to *Felingtons*, upon which there was no appeal: In September next there was an order to remove the man from *Felingtons* to *Alderton* aforesaid. The court now was moved to quash the third, because the second had become absolute, there having been no appeal from it. The counsel on the other side agreed that the second order bound all persons as to preceding settlements; but insisted, that it ought to be intended, that the man had gained a subsequent settlement at *Alderton*, between the second and third orders. But the court held, that seeing the man was fixed upon *Alderton* by the second order, if he had gained a subsequent settlement in *Alderton*, it ought to appear, and for that reason quashed the third order.

The court will not presume a new settlement in three months.

460. *Fosson and Carleton*, T. 9 G. Str. 567. Two Justices send a poor person from *P.* to *C.* on appeal the order is quashed, and at three months end, two Justices, without shewing any new settlement since the last order, make a new order to remove him from *F.* to *C.* a second time. *Per Cur.* The last order must be quashed. The case of *Barrow v. Ingoldsby*, E. 11 Ann. was at the distance of nine months; but the court quashed it, because there could be no inconvenience in putting them to shew a new settlement. Same resolution. *Fort.* 327.

Court will not intend a new settlement in four years.

461. *Capel and West-Pecham*, M. 12 G. Fort. 327. An order of removal from *Capel* to *West-Pecham* was quashed at sessions on the merits, and four years afterwards another order of Justices is made to the same purpose as the former, and it was insisted, that the court *B. R.* would intend a new settlement in four years. *Per Cur.* Here is a judgment, that *Pecham* was not the place of settlement, and as long as that is in force, the Justices have not authority to send to the same place, unless a new settlement or a good reason had appeared in the order, as a foundation for their authority.

If a certificated man is removed before he becomes charge-

462. *R. v. Osgathorpe*, E. 19 G. 2. 2 Str. 1256. A certificated person was removed by an order of two Justices

ices from *D.* to *Osgatborpe*, which on appeal was discharged. He was by a second order sent from *D.* to *Osgatborpe*, as a certificate man; upon appeal it appeared, that the first removal was before he became chargeable, and the second after he became so; and the sessions confirmed the second order of removal. Exception was taken to these last orders, that a removal is final, between the parties. *Salk.* 492, 524. *Per Cur.* So it would be if the special matter did not appear; a certificate person cannot be removed till he is actually chargeable, a removal before that is premature. The consequence of which is only, that he must remain till he does become chargeable, but not to make a premature removal final, for ever. 1 *Burr.* S. C. 261.

463. *R. v. Sutton St. Nicholas alias Lutton, and R. v. Leverington, T. 21 & 22 G. 2. Burr. S. C.* On Wednesday the 8th of May last, a motion was made by Mr. Ford, to quash an original order of Justices made for the removal of *John Bunting* and *Elizabeth* his wife, and their four children, from *Leverington* in the *Isle of Ely*, to *Sutton St. Nicholas*, otherwise *Lutton* in *Lincolnshire*; and also the order of sessions made in confirmation of the said original order. He objected, that they had been removed to *Leverington* from another parish, viz. *Sutton St. Mary*, by a former order of two Justices unappealed from; by which order he urged, that the parish of *Leverington* was bound down, unless some subsequent settlement appeared. And he moved at the same time to affirm the said original order made for removing them from *Sutton St. Mary's* to *Leverington*, and also the order of sessions made in confirmation of it. Mr. Foster now shewed cause, and would have had the court presume that a new settlement had been gained, and he cited 2 *Salk.* 489. between the inhabitants of *Thackbam* and *Findon* as a case in point "where the court did presume so;" and 2. *Salk.* 487. between *South Cadbury* and *Braddon*, to prove that "the Justices are not bound to set forth their reasons in their judgments." Mr. Ford in reply said, that a new settlement shall not be presumed, and he cited a case in *Trin.* term 1732, 5 & 6 G. 2. between the parishes of *Horsington* and *North Fellerton* as in point. Besides, the second removal in the present case is so very recent (only four months) that there could be no time to acquire a new settlement. An exception was then taken by Mr. Foster to the original order, for removing the paupers from *Sutton*

able, and that order is quashed, he may afterwards be removed when actually chargeable.

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ton *St. Mary* to *Leverington*, viz. That two of the children appeared to be of seven and eight years of age, and it was not stated that they had not gained a settlement or were not settled elsewhere. But, Mr. J. Denison and Mr. J. Foster (the only Judges in court) concurred in opinion (as to this exception) "That children of such under age cannot be supposed to have gained any other settlement than the derivative one from their father." And as to Mr. Ford's objection to the second removal (namely, from *Leverington* to *Lutton*) they observed that the removal to *Leverington* was in July 1747, and unappealed from; and the second order was made in November 1747; now the first is conclusive, as not being appealed from, and there is not a sufficient length of time to presume a new settlement: And they mentioned a resolution to the same effect about six years ago; it was between the inhabitants of *Godalmin* and *St. Michael's Winchester*, p. 15 G. 2. and was in point with the present case. *Per Cur.* The second original order (for removal of the pauper from *Leverington* to *Lutton*) and the order of sessions confirming it were quashed; and the first original order (for removal of them from *Sutton St. Mary's* to *Leverington*) confirmed; but the order of sessions made in confirmation of this original order was quashed.

Note. That the first original order of two Justices was confirmed by the sessions, though never appealed from. And Mr. Foster, the counsel for *Leverington*, praying to have this confirmatory order of sessions quashed, and the other side not opposing it, this order of sessions was quashed * as being a voluntary, and as it were an extra-judicial act of the sessions, to confirm an order which was not complained of. It was agreed that one reason of mentioning the ages of children in orders was their not being removeable from their mother at a very tender age, (viz. under seven) but to be sent with her for nurture.

464. *R. v. Bradenham*, E. 29 G. 2. 2 Burr. S. C. 394. Two Justices remove J. S. his wife and children, from *Thame* to *Bradenham*, in December 1754, and the next sessions discharge that order; J. S. running away in March following, two Justices remove the wife and children again from *Thame* to *Bradenham*, as to the place of their legal settlement, and the next *Easter* sessions

J. S. and his family are removed from A. to B. but the order is quashed. He runs away, and his family are removed to B. as the place of their legal settlement, but without stating a new settlement.

* The very same thing was done in the case of *Godalmin* and *St. Michael's* in *Winchester*. The order of sessions which confirmed the first original order of the 1st of December 1740, was quashed, because it was not made upon appeal; for which reason it was agreed by the court and counsel to be a void one.

confirmed their order. Mr. Justice *Denison*, (the Chief Justice being absent), If there had been time to gain a new settlement, the court would not intend or presume it; but it must be specially stated, and it was so determined in *M. 4 G. 1.* between the parishes of *Alderton*, and *Felington*: So if it was her settlement, and not her husband's, that ought to be stated: It shall not be presumed. Mr. *J. Foster*: It is final upon the same parish who obtained the first order of removal, if quashed upon appeal on the merits; for an order quashed on appeal on the merits is conclusive between the two parishes; if confirmed on the merits it is final and conclusive upon the appealing parish against all the world. To prove this he cited the case of *Honiton v. St. Mary Axi* from a *MSS.* of his own: Therefore, unless a new settlement appears to have been gained, this is conclusive. *Per Cur.* The first original order must be quashed, and the first order of sessions affirmed, and the second order of Justices, and the second order of sessions quashed. See *pl.*

465. *R. v. Bentley, E. 30 G. 2. Burr. S. C. 425.* The pauper was removed by order of Justices, from *Baxterley* to *Stourbridge*, which on appeal was discharged. Then *Baxterley* removed him to *Bentley*, and *Bentley* upon appeal offered to give evidence, that the pauper had gained a settlement at *Stourbridge*, subsequent to the settlement which they acknowledged he had gained in *Bentley*. The sessions refused to hear this evidence, because the settlement set up in *Stourbridge* was prior to the first appeal made by *Stourbridge*, and confirmed the order of removal to *Bentley*.—Lord *Manfield*: An order confirmed on appeal concludes all the world: It is a suit instituted, and determined by a court having proper jurisdiction, and between all proper parties. For the parishes, and the pauper were the only proper parties. It is establishing one certain fact, which when ascertained regards all the world, and is not to be considered in the light of a *res inter alios acta*. So the finding that such a one was the father of such a child, or the fact of a marriage, or that a person is executor by suit properly instituted in the spiritual court; in all these cases, when the fact is once established by proper judges, and between proper parties, it is a truth which regards the whole world. But an order discharged is only a kind of negative finding, that such a settlement is not the last legal settlement: But does this establish the affirmative, namely, What is the last

Pauper was removed from A. to B. by an order which was discharged, then A. removed him to C. which was not permitted by the sessions, to give evidence of a settlement at B. subsequent to one gained at C.

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settlement—There is all the reason in the world to let in a third parish not party to the suit to give what evidence they can, because it would otherwise open a door to much collusion between parishes. The sessions in substance have said no more than this: Upon the case made out to us, the pauper is not settled at *Stourbridge*; but this ought not to conclude the third parish from giving what evidence they can to discharge themselves. And nothing is more common in settlement cases, than for one parish to be able to get an evidence, which another parish could not produce; and the other judges concurring, the order was quashed.

Parish appealing, and the Sessions being in different Counties.

The sessions for the county of A. quash an order of removal, from B. in that county to C. in the county of D. Two Justices of D. are then to remove to B.

466. Case of the parish of *Honiton*, &c. *M. 8 W. 3, Comb. 401.* Order of removal from *Honiton*, in the county of *Devon*, to S. in the county of *Somerset*, was reversed at the sessions in the county of *Devon*. Now two Justices in the county of *Somerset* may by order remove him to *Honiton* again, for it is but an execution of the order of sessions, which could not otherwise be done, because it is out of the jurisdiction of the court of sessions.

Pauper returning to the Parish.

Order of Justices for the removal of A. to B. was quashed by an order of sessions, which was afterwards quashed in K. B. The pauper returning from B. to A.

467. *R. v. Hall, H. 7 W. 3. 5 Mod. 163.* An order of Justices to remove a pauper from A. to B. was quashed at the sessions: Afterward upon a *certiorari* brought, the order of sessions was quashed, and the first order confirmed. The pauper went from B. to A. and the Justices apprehended that they had not authority to send him to the house of correction, being of opinion, that the first order was not before them, having been removed by *certiorari*. *Per Cur.* Let the Justices have the former rule of court shewn to them, and the order of the two Justices, and if they refuse to punish the person afterwards, then move the court upon an affidavit of the matter.

If a pauper goes to the parish from which he was sent by an order of removal confirmed by an order of sessions,

468. *R. v. Broadbalk, H. 9 W. 3. 2 Salt. 481.* Two Justices make an order to remove J. R. from *Rowborough* to *Broadbalk*, which was confirmed at the sessions; after this, R. came into the parish of *Downhead*; whereupon

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upon two Justices reciting the former order and confirmation, ordered him to *Broadchalk*; and it was objected to this order, that it did not appear that one of the Justices was of the *quorum*; to which it was answered by the counsel, that it was not necessary in this case, this not being an original order, but an order made in pursuance of an order of sessions. *Per Cur.* If the pauper goes to the parish from which he was removed, the sessions must see their order obeyed; if he goes to another parish not concerned in the appeal, then it is proper for two Justices of Peace to remove him to the parish where he was settled by the sessions, by an original order; but it must appear therein, that one of them is of the *quorum*. * Or. * But: see 26 G. 2, c. 27. then it is the duty of the sessions to procure obedience to their order, but if he goes to a third parish, two Justices may remove him.

469. *R. v. Long-Critchell, M. 12 W. 3. 2 Salk. 489.* A man was removed from the parish of *All-Hallows* to the parish of *Long-Critchell*; he then goes from *Long-Critchell* to *P.* then several orders were obtained from two Justices by way of execution of the first order, to move him from *P.* to *Long-Critchell*, but were all of them quashed; because *P.* ought to have made an original complaint, and upon that have got an order, for *P.* is a third parish, towards which *Long-Critchell* is not bound by the order of removal from *All-Hallows*, but may contest the right of settlement with them.

Returned.

470. *Baldwin and Ux. v. Blackmore, E. 31 G. 2. Burr. Mansf. 595.* This was a case reserved at the assizes for the county of *Lancaster*, in an action for an assault upon, and false imprisonment of the plaintiff's wife. Case—That the plaintiff *William Baldwin* and *Susannah* his wife being paupers, legally settled in the township of *Banknewton* in *Yorkshire*, and having been regularly and properly removed by an order of two Justices of the county of *Lancaster*, from *Marsden* in *Lancashire* to the said township of *Banknewton* in the county of *York*, as the place of their last legal settlement: Which order was not appealed from. That afterwards, they (both of them) returned of their own accord, and without bringing any certificate with them from *Banknewton* (to which they belonged) to *Marsden* aforesaid, from whence they had been removed by the said order of two Justices: Of which complaint being made in writing and upon oath to the defendant, who was a Justice of Peace of the said county of *Lancaster*,
Y 4 where

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wherein the said parish of *Marsden* lay, by the overseers of the said parish, (from which the pauper had been lawfully removed, and to which they unlawfully returned), he issued his warrant to bring the two paupers (the man and his wife) before him; who being accordingly brought, and the facts being fully proved upon oath, made by *Thomas Murgatroyd*, one of the churchwardens of *Marsden* aforesaid, he committed both of them, the man and his wife, to the house of correction, there to remain until they be discharged by the course of law: The warrant was directed to the constable of *Marsden* to convey, and and to the master of the house of correction in *Preston* to receive, and was in these words: "Whereas *Thomas Murgatroyd*, one of the churchwardens of the township of *Marsden* in the said county, hath made oath before me, one of his Majesty's Justices of the Peace, in and for the said county: That *William Baldwin* and *Susan* his wife, poor persons, having been lately removed by an order, under the hands and seals of *Roger Heslith* and *Rigby Molineux*, esquires, two of his Majesty's Justices of the Peace and *quorum*, in and for the said county, from the said township of *Marsden* unto *Banknewton* in the west riding in the county of *York*, as to their last lawful settlement, are now returned back to inhabit in the said town of *Marsden*, contrary to the statute in this behalf made: These are therefore in his Majesty's name, to command you forthwith to convey them the said *William Baldwin* and *Susan* his wife, to the house of correction aforesaid, and deliver them to the master thereof, hereby requiring him to receive them into his custody, and them to safely keep, until they shall thence be discharged by the course of law. Hereof fail not at your peril— Given, &c. this 6th of *February*," &c. That under this warrant of commitment, the plaintiff and his wife were kept in prison, in custody of the keeper of the house of correction at *Preston*, from 12th of *February* to 17th of *March* following. Notice was proved to be given to the defendant, of bringing the action one month before it was brought. Upon the trial of this cause, there was a verdict for the plaintiff, and 1 s. damages, subject to the opinion of the court, upon the two following questions, viz. 1st, Whether there ought not to have been a previous conviction of vagrancy? 2dly. Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she

she only accompanied and resided with her own husband? See 13 & 14 Ch. 2. c. 12. s. 3. & 17 G. 2. c. 5. s. 1. Lord Mansfield said, That perhaps that might have been practised for the sake of general good: He strongly intimated, that it would be a right thing to compromise this cause, and if it should not be so, he desired to know the practice and usage about sending the wife to the house of correction with the husband. As to 13, 14 Car. 2. he said he was now satisfied by his brother Foster, that it had always been taken as a general law; notwithstanding the words of reference (which had struck him on the reading). Mr. J. Foster desired to know also, how the practice had been as to children. Mr. Clayton, (who was counsel for the defendant in the former argument) said he had known the children also committed. *Cur. avis. i. e.* eventually, if not compromised. On Tuesday the 25th of April 1758, this case being mentioned at the bar, as standing for the opinion of the court; Mr. Norton (for the defendant) then said, he had several certificates of its being a practice for Justices to commit the wife as well as the husband, for returning to the parish from whence they had been removed, although she so returned with her husband. Lord Mansfield now (on Tuesday the 2d of May 1758), delivered the resolution of the court. He first stated the whole case very fully; and he prefaced, that it was manifest that the Justice had not acted intentionally wrong, and it is plain that the jury were of that opinion, as appears by their giving only one shilling damages. The court would gladly therefore have leaned towards excusing this gentleman from suffering for what he had honestly and without any bad intention done, if they could have found him justifiable by any legal excuse. But there is one fatal objection to his proceeding which we cannot get over, and which puts all other points out of the case, and that is that the warrant of commitment is illegal: The legality of the warrant depends upon two acts of parliament, or at least upon one of them; for there are two acts of parliament, upon one of which this warrant must be founded; though it does not appear upon which of the two the Justice proceeded: These two acts are 13, 14 Car. 2. c. 12. (a law made before certificates under the late acts existed) and 17 G. 2. c. 5. which relates to persons returning, &c. without bringing such a certificate. Now this warrant is not within the former act of 13, 14 Ch. 2. nor is the case itself within it; these persons did not go to any parish,

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parish, carrying with them a certificate of their being inhabitants of their proper parish, nor is the commitment made "To the house of correction, there to be punished as vagrants; nor to a publick workhouse, there to be employed in work and labour, as that statute directs." So that the warrant is not at all agreeable to the directions of that act, which specifies the particular manner of sending the offender to the house of correction, or to a publick workhouse, for it is only "to remain till discharged by the course of law." Neither can this warrant be good upon the latter act of 17 G. 2, c. 5. because, though this is indeed a commitment to the house of correction, (which the latter act directs) yet it is "to remain there until discharged by the course of law." Whereas by this act, the power given the Justice is, "to command such offenders to the house of correction, there to be kept to hard labour for any time not exceeding one month." But this warrant is quite general, it is an indefinite commitment, not for a precise limited time, as this act expressly directs and requires. Therefore the warrant of commitment is totally illegal, and consequently the plaintiff is intitled to the damages that he has recovered; and you will observe, that we go only upon the warrant, which, for the reasons I have mentioned, we hold to be totally illegal. Rule, that the *posse* be delivered to the plaintiff.

Costs.

Sessions are to determine the reasonableness of giving costs on an appeal.

Costs.

471. *R. v. Justices of the county of Nottingham*, 5 G. 2. *Nelson's Justice. Tit. Poor.* A *Mandamus* was directed to the Justices to give costs to the party in whose favour the appeal had been determined. But upon the return, the court held it reasonable for them to have the power of judging whether costs should be allowed or not, and quashed the writ of *Mandamus*.

472. Case of the parishes of *Moidenbradley* and *Wallingford*, E. 12 G. 2. Fol. 263. Two exceptions were taken to an order made for costs at the sessions, upon the statute 9 Geo. The first exception was, that it orders so much for costs, without saying that so much was expended or laid out. *Cur.* It appears by the oath of the parties, that so much was laid out. The second was, that it is said, "or hearing the appeal," &c. and does not say, that there was any appeal lodged. *Cur.* It is well

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well enough, for there must be an appeal, or they could not hear it, and they need not be so nice as in a special pleading. Order confirmed.

473. *R. v. Great-Chart, M. 16 G. 2. Burr. S. C.*

194. An order of sessions, quashed an insufficient order of Justices for the removal of a pauper, from the parish of *Great-Chart* to the parish of *Kennington*, concluded thus, "It is further ordered by this court, that the costs of maintenance of the said *S. M.* since the time of the removal to the said parish of *Kennington*, shall abide the event of the cause; in case the said parish of *Great-Chart* shall think proper by another order to remove the said *S. M.* to the said parish of *Kennington*, and the inhabitants of *Kennington* appeal to this court from the same." By the court: Let that part of the order, which directs the costs of maintaining the pauper to attend the event of the cause, be quashed.

Sessions have no jurisdiction in case of removal of paupers, but on appeal. Sessions cannot direct the costs to attend the event of another presumed appeal.

Certiorari.

474. *Certiorari* not granted to remove orders of Justices, See 5 G. 2. c. 19. from which an appeal is given to the sessions, before the matter is determined on the appeal, and if any order is removed before appeal it must be sent down again by *procedendo*; but if time allowed by statute for appeal is expired, that case is out of the rule. *Per Holt* Chief Justices, *B. 2 An.* but in *Mich. 4 Anne*, it was held that advantage must be taken of this rule upon the motion to file the order, for after it is filed it is too late. *Salk. 147. 7 Mod. 10.*

See article *certiorari*, in the index.

C H A P. XI.

Of Persons having no Settlement, or whose Settlement is unknown.

475. *Cowrad's Case. T. 6 W. 3. Comb. 287.* A woman and her two children landed at *Harwich*, from *Holland*, and removing to another place were sent back by order of Justices. *Per Cur. Holt Ch. J. absent.* The landing

Landing at a seaport gains no settlement.

landing makes no settlement; the order must be quashed.
Poors Sett. 243.

476. *R. v. Wilborough-Green, M. 12 Ann. Fort.* 314.

The settlement of the wife of a Scotchman who has gained no settlement in England, is that which she had before marriage.

Whereas complaint has been made to us by the overseers, &c. of *D.* that *A.* the wife of *Archibald Player*, with *Henry* her son aged three years, is come into the parish of *D.* and is likely to become chargeable, &c. and that the said *Archibald Player* is a Scotchman, not having any legal settlement in *Great Britain*, &c. We do adjudge the place of the last legal settlement of the said *A.* and her said child to be at *Wilborough-Green*; therefore they remove the said *A.* and her child thither as being the place of settlement of *A.* before marriage. First exception was, that *Archibald Player* might have a settlement in *Wales*; but the court held, that the expression, "*Great Britain*," was well enough. Second exception, This was a married woman, and by her marriage she ought to be settled where her husband was; If the Justices may send away a wife, it is making a divorce between husband and wife: and if he is a Scotchman, they ought to send her as part of his family, to the bordering counties of *Scotland*, according to the act of the 39 *Eliz.* c. 4. s. 6. The court held, that notwithstanding she was a married woman, yet if her husband had no settlement, she could not gain any other settlement, than that she had before marriage: That here was no divorce; for the husband might come to her as well at *Wilborough-Green*, as at *D.* and as to the husband, it does not appear in the order whether he is in *England* or not. Order confirmed.

477: Case of parishes of *Tyton* and *King's-Norton*, *Lent* assizes 1726. *MSS.* The settlement of a pauper's mother was at *Worthling* in *Salop*: She married a Scotchman, who was a hawker and pedlar, and never gained any settlement in *England*, and during the time that the father and mother were travelling up and down selling their goods the pauper was born at the parish of *King's Norton*, at which time the Justices of the sessions at *Stafford*, doubting where the settlement was, reserved the matter for the Judges of assize, and the counsel for *Tyton* insisted, that pauper was a vagrant, and his settlement properly at the place of his birth: But *Dormer* and *Fortescue*, the Justices of assize, were clear of opinion, that the pauper was settled at *Worthling*; and *Fortescue* said, if the mother has a settlement, the child is no vagrant.

The wife of a Scotch pedlar, is delivered of a child whilst travelling with her husband.

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478. *R. v. Westerham*, H. 12 G. Fol. 288. Case states, that it appearing to the court (of sessions) by the testimony of *Eliz. Pinchen*, that she was, at the time when the said order of Justices was made, a married woman, and that her husband was one *Thomas Pinchen* who was born in *Wiltshire*, but in what place or parish he had a settlement he never informed her, and she does not know; but that he has run away, and still living for what she knows: this court quashes the order of Justices for the removal of her, and her child aged nine years, to the place of the settlement of the said *Eliz. Pinchen*. *Par Cur.* This *Eliz. Pinchen* and her child ought to be settled where *Eliz. Pinchen's* settlement was before marriage. Order of sessions quashed. *Str.* 683.

479. Case of the parishes of *St. Giles* and *St. Margaret*, M. 3 G. 2. Fol. 287. *Sarah Etherington*, and her daughter aged five years, were removed from *St. Margaret's* to *St. Giles's*, as being the place of *Sarah's* last legal settlement, before her marriage with an Irishman who had no settlement; and the order was confirmed.

480. *R. v. Inhabitants of St. Botolph's*, H. 28 G. 2. 2 Burr. S.C. 367. *Eleanor* the pauper being settled in the parish of *St. Botolph*, married *Finley* an Irish sailor, who had no settlement as far as she knows, and who is alive as she believes, having lately heard so. The sessions remove her and her child to *St. Botolph* as the place of her last legal settlement. *Ld Ch. J. Rider* delivered the resolution of the court. *St. Botolph's* parish was once the place of *Eleanor Finley's* settlement, and would so continue till she has gained another. It could not cease by any other method. A man cannot give away, or release, or suspend his settlement, for the publick is concerned in it as well as himself. If a man has a settlement, his wife and children will be intitled to it; but if he has none, they can have none for him: It is objected, that this will separate the wife in effect from her husband, and amount in effect to a divorce. But they are separated already, for he has left her, and since he has no settlement of his own, he may as well go to her in her own maiden settlement as in another place. It is no hardship upon the parish where she was settled before coverture, if her former settlement was never determined; because as long as that continues, it is their duty to maintain her. There are four cases in point, that the wife's maiden settlement remains, unless she acquires another, and there is a fifth pretty

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pretty nearly so. But the case of the inhabitants of *Norton* has been cited, as a direct authority to the contrary; *But See pl. 477. (*Burr. S. C. p. 39.*) and it really seems to be so. * But it cannot be an universal rule, that the last determination of a point cannot be departed from, because that same argument would have been of equal force, against that very determination which varied from the preceding: We therefore are all of opinion, that the mother's maiden settlement remains, having never been determined, but only as it were suspended during the time that she continued under the power and protection of the husband, and was maintained and supported by him. A legitimate child has a right to its parents settlement. The father's shall take effect first; but in cases like this where the father has none, the child must go to its mother's settlement, and not merely for nurture. Orders affirmed.

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Settlement by Birth.

Of illegitimate Children, See Title *Bastards*.
Of the Settlement of Children with their Parents, see pl. 487. Of the Settlement of Children emancipated from their Parents, pl. 503.—See also the Titles *Settlement by Estate*, and by *Inhabitation*.

BY Holt Chief Justice: Where a child is first known to be, that parish must provide for it, till they find another. *Comb. 364, 72.* If the father's last legal settlement is unknown, the child, tho' legitimate, may be sent to the place of its birth. *Dalt. 242. Vin. Abr. title Settlement 382.* Child born after the father's death, shall be sent to the last legal settlement of the father deceased. A travelling woman, having a small sucking child was apprehended for felony, sent to the goal, and executed, if the place of the birth of this child is not known, it must be sent to the town where the mother was apprehended, because that town ought not to have sent the child to goal, being no malefactor. *Dalt. 168.*

Settlement of a
child sent to
prison with its
mother.

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481. *Whitechapel v. Stepney, Carth. 433.* If the father is a vagabond, his legitimate child gains a settlement where born, otherwise it would be born a vagrant. But by the 17 G. 2. c. 5. Bastards born in streets, &c. shall not gain settlements where born, but shall have the mother's settlement. Settlement of the legitimate and illegitimate children of vagabonds.

482. *Hard's Case, M. 8 W. 3. 2 Salk. 427.* Sir B. Shower moved to quash an order for the removal of an idiot to the place of the last legal settlement of his father, comparing it to the case of a bastard who is to be maintained by the parish where it was born. But *per Holt Ch. J.* The father of an idiot ought to maintain him, and if he cannot, the parish or place where his father is settled. There is no difference to be made in this respect between an idiot and any other poor child. But the case of a bastard differs, because he has no father, or none whom the law takes notice of as such, and therefore till the 18th of *Eliz.* the parishes where they were born, were bound to maintain them. *Sed adjournat. Comb. 380. Mod. Cases 87.* Settlement of an idiot.

483. *Christ's Hospital's Case, H. 10 W. 3. 2 Salk.* It must be ad-

485. Upon complaint of the wardens of the hospital, two Justices made an order upon the overseers of the parish to receive and maintain a child, which had been left in the hospital: But the order was quashed, because it was not said, that the parents were unknown, or that the child was likely to be chargeable to the parish; for though a child of three months old is helpless, yet the parents if able are bound to provide for it. As to the principal matter which was hinted, *viz.* that the hospital is bound to provide for poor children there exposed, the court thought there was nothing in that. judged, that the child is likely to become chargeable, or that the parents are unknown.

484. Case of the parish of *Coxwell and Shillingsford, H. 4 Ann. Fort. 313. Per Holt Ch. J.* The birth of a legitimate child does not make a settlement, but the place of the last legal settlement of the father. One born or dropt in a place where a person is vagrant, gains no settlement by being dropped, but where the father was last legally settled. See Birth of a legitimate child does not give a settlement, unless no other appears.

485. Parishes of *Cripplegate and St. Saviours, H. 8 Ann. Fol. 305.* A child of three years old was removed from *A.* to *B.* and it appeared in the order that they removed him thither because he was born there, not having gained any other settlement. *Per Cur.* The father's settlement is the settlement for the children, when it can be found out; otherwise the birth of the child Order assigned for reason of the removal of a child of three years old to *A.* that he was born there.

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child is *prima facie* the child's settlement until another is found out. So the settlement of a bastard child is the place of its birth, because *nullius filius*; if they cannot find out a father's legal settlement, the birth is the settlement of the child. If a child be dropt in a parish, they may remove him to the place of his birth, or where his father's settlement was, and the settlement by his birth is only *quousque* they find the father's settlement; and if they never can find that, it is absolute upon them. And *per cur.* The age of a nurse child so as to go along with its mother is until seven years of age.

Of the removal
of children, un-
der or above
seven years of
age.

486. *R. v. Heptonstall*, T. 10 G. 2. *Burr.* S. C. 88. *Per. Cur.* Where a place is adjudged only to be the last legal settlement of the father, and the children are sent thither in consequence of it being the father's settlement, their ages must be set out, because they may perhaps have gained a settlement for themselves since: But it is not necessary to set out the ages of the children, where the Justices adjudge the place to which they remove them to be the place of their own last legal settlement.

Settlement of Children with their Parents.

Father being
dead.

487. *R. v. Luckington*, T. 8 W. 3. *Comb.* 380. *H.* and his wife, being settled at *Luckington*, came to *Austin's* and had a child born there. The father dying in the King's service, the question was, who shall keep the child? It was objected, that it was settled where born, for they could not send it to the father when he was dead. But *Holt. Ch. Justice* held, That the death of the father does not alter the child's settlement.

Mother marry-
ing again.

488. *R. v. Saxmundham*, 12 W. 3. A child of a former husband tho' but a year old, when a woman is married to a second husband, cannot gain a settlement in the parish where she goes with him, but only shall go there for nurture; but must be maintained by the parish where the child's father had a settlement, and also if a bastard. *Fort.* 307.

Hi. being settled
at A. and having
several children
there, removes
to, and gains a
settlement at B.
His children un-
der the age of
seven years are
settled at B.

489. *R. v. Cumner*, T. 1 Ann. 2 *Salk.* 528. *H.* was settled at *Cumner*, and had several children born there, afterwards he removed to and gained a settlement at *Milton*; and becoming poor, his children under the age of seven years, were sent back to *Cumner*. *Powell Justice* held, that when a child is sent with the parents for nurture only, it gains no settlement; but here the children did not come by order, and the children's settle-
ment

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ment shall not be divided from the father, for that would be unnatural. Where a man gains a settlement for himself, his wife and servants, he shall likewise gain one for his children also; but if a widow having children under seven years of age, marries a second husband of another parish, they shall go with her for nurture, but shall not gain a settlement there, and shall return when they are seven years old. She cannot gain a settlement for them being under coverture, and not gaining a settlement for herself, only as part of her husband's family. *Holt Ch. J.*: Birth is the first settlement, and there must be another by forty days, &c. to alter the first settlement. A child under the age of seven years is accounted a nurse child. If a child above seven years of age be put out to nurse, or for education, it gains no settlement: The question is, whether the first settlement by birth be altered by the father's gaining a new settlement: Suppose the father and mother came to *A.* and then go to *B.* and within forty days the mother is delivered of a child. The child though legitimate shall be settled where born. The Justices cannot remove the children from the father till he falls to decay: If a father be settled and dying, and his wife being big with child, dies before the child is born; and after her death the child is born, it is settled at the place of its birth. In this case the settlement of the father at *Milton* is the settlement of his children. The child is settled by birth only where it is an accidental settlement. Order quashed. *Fort. 322.*

490. *R. v. Parish of St. Giles, E. 10 Ann. Fol. 308.* Order for removing an infant from *Rickmansworth* to *St. Giles's*, was objected to, as stating, that the infant was born in *St. Giles's*, and that therefore he is sent there; but in the same order it appears, that his father was last legally settled at *Rickmansworth*. *Per cur.* The birth of a bastard child is its settlement; but not of one born in wedlock, but the settlement of the father shall always be esteemed the settlement of an infant born in wedlock, if that can be found out. Let this order be quashed. See *Cripplegate v. St Saviour's. Fol. 305.*

491. *R. v. Eversley, T. 12 Ann. Poors Sett. 22.* Order reciting, that *A.* lately deceased intruded in his lifetime into *Eversley*, and that he was legally settled at *Hartley*, directed *Francis* his wife, and her three children to be removed to *Hartley*, as being settled there in right of her husband, was quashed, because she might have gained a settlement since the death of her husband.

Settlement of a legitimate child is that of his father.

The husband of *A.* being in his lifetime settled at *B.* not sufficient without an adjudication, that the widow hath obtained no settlement since his death.

Father being dead, the settlement of the children shall be that which the mother aquireth after the death of the father in her own right,

492. Case of the parishes of *St. George* and *St. Katherine*, *M. v. G. Raym.* 774. A. maries a man who had a settlement in the parish of *St. Katherine*, by whom she had six children born there, and she lived with her husband there till he died; and then she removed into the parish of *St. George* with her six children, and hires an house of 12 l. a year, and lived in it with her children four months, and paid the Queen's tax. The Justices send these six children to *St. Katherine's* as being the last place of their father's settlement. The single question therefore upon these orders was, whether the children should be settled where the father was last settled, or have a settlement with their mother in the parish of *St. George*; and the court was unanimously of opinion, that the six children were settled in the parish of *St. George*, where the mother's last settlement was.

A. having a settlement at B. removes to C. has two children there, and dies without gaining a new settlement; the children are settled at C.

493. *R. v. St. Giles's Reading*, H. 10 G. Lord Raym. 1332. A poor man who had gained a settlement in the parish of *Everfley Blackwater*, removed into the parish of *St. Giles* in *Reading*, married there, and had two children born there, and lived there till his death; but gained no new settlement in that parish. After his death his children were removed to *Everfley Blackwater* by order of two Justices; which order on appeal to the sessions was quashed. It was now argued, in support of the order of sessions, that the place of the birth of the children was the place of their settlement, from *Salk.* 528. *Camner* and *Milton*, and that it was adjudged in the case of *Spittlefields* and *St. Andrew's Holbourn*, that a poor child must be maintained by the parish where it was born, if it has gained no other settlement, and its parents have none. But it was determined by the court, that though the place of the birth of a poor child, where the father has no settlement, is the place of settlement of the child, yet where the father has gained a settlement, his children, though born in another parish, shall be looked on as settled at the place of their father's last legal settlement, and shall be removed thither as well after the death of their father, if occasion requires, as in his lifetime, supposing they have gained no settlement of their own. The order of sessions was quashed. 1 Str. 580.

See *R. v. Barton*, Burr. S. C. 49.

494. *R. v. Woodend*, H. 13 G. Lord Raym. 1473. *John Buncher* rented a tenement at *Woodend*, at 30 l. a year, and inhabited upon it some years. He died insolvent, his widow then removed with her only child *Elizabeth* (the pauper,

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pauper) then about fourteen years of age, to *Paulbury*, into a messuage of about forty shillings a year value, and some land of 10 *l.* a year value, which was her own estate for life. The messuage was copyhold, as was likewise the land, which was let to a tenant. The pauper lived with her mother two years in the said messuage. Mr. *Reeve* moved to quash the order of sessions, because the widow having gained a new settlement after her husband's death, their daughter gained a settlement also as part of her family. He insisted, that there is no difference between the effect of a settlement gained by the father or the mother in such a case as this; the mother being obliged to provide for the children, as the father was when living. That she could not leave her daughter, nor could her daughter be removed from her. But if the widow had married a person settled in another parish; though her children by her former husband (under a certain age) must have gone with her for nurture, yet they would have gained no settlement in that parish, and cited the case of the parish of *St. Katherine's* determined in *M. 1 G.* as in point. The court directed the order in that case to be read; in which it was stated, that *John Cloyd* left a widow and six children, (four of which were more than seven years of age), that he was legally settled at *St. Katherine's* at the time of his death; shortly after which, his widow and six children went to dwell in the parish of *St. Georges Southwark*; that none of the children had then gained a settlement distinct from the settlement of their father; that the widow took a house in *St. George's* of the rent of 12 *l.* a year, lived in it four months with her children, paid the Queen's taxes; but paid no rent to the landlord. The Justices in sessions adjudged this no settlement of the children in *St. George's*; but this order was quashed in *M. 1 G.* for the reasons alleged by Mr. *Reeve*. Therefore, upon the authority of that case, the court quashed the order in the present case. In 2 *Str.* 746. it appears, that the court would have doubted if this had been *res integra*, whether a settlement gained under the head of the family could be divested by a derivative one from the inferior.

See pl. 492.

495. *R. v. St. Giles's in the Fields, T. 6 & 7 G. 2.* Mother gains a settlement. (after the father's death) not in her own right. *Burr. S. C. 2.* The pauper was an infant of nine years of age. His father's settlement was not known, his mother's settlement before marriage was known: After his father's death, his mother gained a new settlement by marriage with a second husband. By the court: The pauper's

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pauper's settlement is where his mother was last settled before her marriage with his father; the new settlement of his mother not being acquired in her own right, but in that of her second husband. And in this case the court held, that where children are sent with their mother for nurture, they are to be supported at the expence of the parish where their legal settlement is.

In the father's absence the mother inhabits an estate of her own but does not thereby gain a settlement for their children.

496. Case of the parishes of *Berkhamstead* and *St. Mary North-Church*, E. 8 G. 2. MSS. Case specially stated was, that *John Woodward* being settled at *North-Church* went with a certificate to *Albury* where he was made church clerk, and executed the office for some years, and then run away from *Mary* his wife and three children: Some time after *Mary's* mother dying left her two houses in *North-Church*, one in fee, the other for life, and *Mary* went with her children, and resided in one of these houses for two years; but not having sufficient, she applied for relief to the parish for her and her children. Husband never returning, two Justices make an order to remove the children, the youngest of them being seven years old, to *Albury* as the place of their father's settlement.—The sessions on appeal quashed this order. *Hardwicke Ch. J.* As this case is stated, the mother cannot gain a settlement for her children. The father whilst alive is head of the family, and the children must derive their settlement through him. As to the case of foreigners or *Scotchmen* who have no settlement, they are singular cases, and the wife gains a settlement through necessity; but there never was an instance where the wife was held to acquire one during the life of her husband: He in right of his wife has a title to live at *North-Church*, but he can gain no settlement there without a residence for forty days.—There must be in all cases an inhabitancy. The wife's inhabitancy at *North-Church* with her children is not the inhabitancy of her husband. A feme covert cannot by residence gain a settlement for her husband.—The only doubt is, whether he being stated only to have been made chief clerk, we are bound to look on this appointment as for life. *Page, Probyn concess*: *Lee* seemed to think the mother could gain a right of residence for her children at *N. C.* but that she could not gain a settlement for them during the father's life.

Children remaining as part of the father's family.

497. *R. v. Sowton*, H. 12 G. 2. *Burr. S. C.* 125. *T. W.* having an estate in his own right for some term of years in the parish of *Sydbury*, of 19 l. 10 s. a year, left his children in the parish of *Sowton*, and went to *Sydbury*,

Sydney, and accepted a surrender of his said estate from his tenant, and lived and lodged at an alehouse in the parish of *Sydney*, by intervals for more than forty days, but not for forty days at any one time; he paid no rates, had no stock upon the said estate; his children aged 22, 19, 16 and 8 years, were all the time at *Sewton*, till he sold and conveyed away his interest in the premises at *Sydney*, and returned to them at *Sewton*, and none of the said children had then or since gained any settlement of their own. *Ld. Ch. J. Lee*: This order is not so fully stated as it might have been, for it does not express how he came to the estate. However, we are not authorized to say he came to it by purchase. It makes no difference whether he resided at his own house, or at another person's, or at an alehouse; he was forty days in an irremovable state in *Sydney*, and I think upon the whole, that he gained a settlement there, and you all agree, that the children must go with their father, as they have not gained any settlement of their own, and remain part of his family. The other three Judges concurred and observed, that they could not intend it to be a purchase under 30 *l*. If they were to intend it a purchase at all, they must intend it to be for a consideration of more than 30 *l*. For if less it should have been shewn by the other side. Order of sessions vacating the original order quashed.

498. *R. v. Ironation M.* 14 G. 2. *Burr. S. C.* 153. If the wife and family of a man are without him in a parish, they may be removed to the place of his settlement, and it shall not be intended, that he is not there. Two Justices upon complaint of the churchwardens, &c. that *Mary* the wife of *William King*, and eight of their children (naming them) had intruded into *Painswick*, removed them to *Ironation*, which they adjudged to be the last legal settlement of the husband. Objection was made, that the wife and children are removed without the husband. *Per Cur.* How does it appear that the husband was not at *Ironation* at that time? We cannot suppose it to be wrong, unless it appears so; the supposition is rather, that he is at the place where he is adjudged to be legally settled. The intrusion complained of is only, that of the wife and children: How could the Justices remove the husband when he was not complained of?

499. *R. v. Bowling, E.* 15 G. 2. *Burr. S. C.* 177. Certificate may be made of a year in one parish, and as much in another. Two Justices made an order for the removal of *J. H.* and *Judith* his wife, and *Jeremiah* and *Elizabeth* their children (not setting forth the ages of their children) from *Bradford* to *Bowling*: The case stated was, that *J. H.* gained his settlement at *Bradford* in the parish of *Bradford*.

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J. H. being legally settled at *Bradford*, was bound apprentice to a certificate man in *Bowling*, and served his master six years: During the service, his master rented and resided upon a tenement of nine pounds a year in *Bowling*, and at the same time rented lands of the value of nine pounds a year in *Wybsey*. *Per Cur.* The established rule is, that where the children are sent in consequence of their father's settlement, either the ages of the children must be set out to shew, that they are of such tender years as that they have not gained a settlement for themselves, or that there must be an express adjudication, that they have not gained any other settlement. As to the other point it depends upon the construction of the 9 & 10 *W. 3. c. 11.* which says, that no certificate person shall gain a settlement in the parish, unless he or they shall really and *bona fide* take a lease of a tenement of the yearly value of ten pounds, or shall execute some annual office in such parish. There is no reason why this statute should receive a different construction from that of the 13 and 14 *C. 2. c. 12.* The words in such parish, in 9 and 10 *W. 3.* do not restrain the tenement, to the same parish, they relate only to the latter clause of executing some annual office; and not at all to the former of renting a tenement of ten pounds a year; that the construction is such, upon the statute of *C. 2.* appears by the cases of *R. v. Hollibourne*, and *R. v. Sandwich*. And there is not the same reason for renting ten pounds a year in the same parish, as there is for executing an annual office in the same parish: The first clause turns upon a man's substance: it is immaterial, where he rents the 10 *l.* a year; but where he executes an office in a parish, it is benefited by his so doing. Order quashed as to the children. Affirmed as to the rest.

General order of sessions cannot be sent back.

500. *R. v. Normanton*, *E. 16 G. 2. Burr. S. C. 213.* Two Justices made an order to remove *Elizabeth* the wife of *Job Smith*, *John*, *Anne*, *Thomas* and *Mary* her children from *K.* to *Normanton*, as the last legal place of settlement of *Job Smith*. The sessions confirmed that order generally. *Mr. Eardley Willmot* took three exceptions to these orders. First, That the children do not appear by this order to be children of *Job Smith*, but only the children of *Elizabeth Smith*. Second, Their ages are not set out, nor is there an adjudication of their settlement. Third, That *Job Smith* whose settlement is adjudged to be at *Normanton* is the same *Job Smith*, who is husband to *Elizabeth Smith*, the words not being, "the said

Removal of the wife of *J. S.* and her children to the settlement of *J. S.*

"*Job*

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"*Job Smith*," but "*Job Smith* generally." *Per Cur.* The order of sessions being a general one cannot be sent back, the two first exceptions are good; but we will intend that *Job Smith* whose settlement is adjudged at *N.* to be the husband of *Elizabeth*: Therefore the orders must be quashed as to the children; but affirmed as to the woman.

501. *R. v. Aythorp Rooding*, *M.* 30 *G.* 2. 2 *Burr.* S. C. 412. The pauper's husband being legally settled at *W.* Pauper's husband went away, and she then removed with her children into a copyhold tenement of her husband. *R.* went away and left his wife and children, and whereupon she went with her children, and lived forty days with her husband in a copyhold tenement of his at *Aythorp Rooding*; but legal notice to depart was given to her within forty days by *Aythorp Rooding*. Two Justices removed her as being likely to become chargeable to *W. R.* which they adjudge to be the last settlement of her husband; but the sessions quashed that order. Lord *Mansfield*: It does not appear, that the pauper went to reside upon this tenement against her husband's consent: She is irremovable from the property of her husband, upon being only likely to become chargeable, when actually chargeable she may be removed. Mr. *J. Denison*: Gaining a settlement, *N. B.* and being irremovable forty days are not convertible terms. The husband's settlement as well as her's remains as it was, and yet the wife is not removeable from his estate. *Aythorp Rooding* is not obliged to maintain her: The Justices have done wrong in removing her as being only likely to become chargeable. Mr. *J. Foster* held, that this woman had a natural or matrimonial right to go to her husband's estate, and as no dissent of her husband appears, we should rather presume, that he consented. His right of residing there is under *Magna Charta*, none shall be disseised of his freehold. If this woman had become chargeable to the parish of *Aythorp Rooding*, I think, that by common law they must have maintained her: This is the common law, so far back as the mirror. Mr. *J. Wilmut* was absent. *N. B.* In this case a difference was attempted to be made as to the children above and under seven years of age; but as the wife is the head of the family in the husband's absence, she is to have the care of the children, and the court will not presume a child of nine years of age to be emancipated. *MSS.*

502. *R. v. St. Matthew's Bethnal Green*, *M.* 33 *G.* 2. 2 *Burr.* S. C. 482. Father having no settlement. *Elizabeth Taylor* was born in the precinct of *St. Katherine's* and married *E. Brazier*, whose settlement is unknown, and who died many years ago;

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his widow afterwards married *Isaac Coiffeau* a *Frenchman*, who never gained a settlement: The said *I. C.* and his wife lived many years together in *Bethnal Green* parish; and had *Abraham Coiffeau*, born in the said parish, and he married *Mary Dormer* (the pauper) who was born in the same parish. *Peter Dormer*, whose daughter *Mary* was married to *Abraham Coiffeau*, was settled in the parish of *St. Leonard Shoreditch*. The counsel for supporting the order attempted to set up a distinction, or preference between acquired and derivative settlements. Lord *Mansfield*: Upon this order it must be taken, that *St. Katherine's* was the place of settlement of *Elizabeth Coiffeau*; her husband had no settlement; therefore her son and his wife must be settled there too. Mr. *J. Foster*: It is a common case, that if the father's settlement cannot be found, you go back to the grandfather. Mr. *J. Wilmot*: Birth gives even a legitimate child a settlement if its parents had none. *Abraham Coiffeau's* settlement must follow that of his father, if his father had any; but in this case the father had none; but his mother had one (in *St. Katherine's*): Therefore his settlement (and consequently that of the pauper his wife) was, where his mother was settled. There is no merit or preminence betwixt settlements; they depend upon positive law; therefore there is no difference between an acquired and derivative settlement. To which the rest of the Judges agreeing, the order of sessions was quashed.

N.B.

Settlement of Children emancipated from their Parents.

See pl. 496 and 503.

See *R. v. Borden*.

503. *R. v. East-Woodhey*, T. 7 G. The father of the pauper was forty years ago seized in fee of a freehold estate at *Hampstead Marshall*, and lived there till 1697, and had this pauper, who was in that year eight years old, when the whole family removed to *Chevely*, where the father rented a tenement of 20 *l.* a year, for two years, and in 1699 purchased a copyhold estate of 11 *l.* per *Ann.* in *West-Woodhey*, whither he removed with his son and servants, and paid taxes, and served parish offices till 1716, when he purchased a tenement of 1 *l.* 12 *s.* and 6 *d.* a year in *East-Woodhey*, and went and lived upon it till his death; but the pauper staid behind at *East-Woodhey*, married, and worked there ever since on his own account, and was thirty years of age at the time of making

king the order. Chief Justice : If the pauper had gone with his father to *East-Woodhey*, possibly it might have been a settlement of him there ; but by staying behind he was divided from his father, his settlement is therefore at *West-Woodhey* where he last lived as part of his father's family. *Eyre* Justice : Suppose a master has two farms in different parishes, and he remove during the year and leaves the servant behind to take care of the farm from which he has removed, will the master's having gained a new settlement, transfer the settlement, which the servant had gained by his service ? Certainly not. Order quashed. *Str.* 438. Upon the reason and authority of this case, that of *R. v. The Inhabitants of St. Michael's Cossany* in *Norwich* was determined in *E. 2. G. 2.* in which case it was stated, that *Edmund Williams*, father of *Edmund Williams* removed, was settled at *Shipton Mallet* (in *Somersetshire*), and afterwards removed to *Bratton*, where he lived twenty years, and the pauper was born there and bred up by his father to his own business till he was nineteen years old, and then he left his father and went to *Norwich*, married and had several children, since the birth of which, the grandfather gained a settlement in *Ipswich*, to which two Justices removed the pauper ; but the sessions quashed the order, and the court of *K. B.* held the judgment of the sessions to be right. *Str.* 831.

504. *R. v. Walpole St. Peter's, E. 9 G. 3.* *A.* was born at *Leverington* in 1740, where his father occupied a farm of fifty pounds a year for upwards of twelve months, and then removed with his father to a larger farm which his father occupied in *Emmeth*, and continued there eight years as part of his father's family ; in 1754 he went with his father to *Outwell*, and lived with him there till *Michaelmas* 1755, when he hired himself for a year in *Martin Drons*, and lived from his father under that agreement six months, and then returned to his father at *Outwell*. At *Ladyday* 1759 he enlisted for a soldier, and was discharged after four years service. About three months after his discharge he came home to his father, who then lived at *Walpole* upon a farm of fifty pounds a year, and continued with him above forty days : About *Candlemas* 1767, he married and went with his wife to his father at *Walpole*, and never did any thing after to gain a settlement : In 1768 he was removed from *Wifbeach* to *Walpole*. *Mr. Blackstone* now moved to quash the order of Justices, and that of sessions confirming it ;

Father gains a settlement after his son has been emancipated.

because

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because the father had gained no settlement in *Walpole*, till after his son was emancipated from his family, and consequently he could not receive a subsequential settlement acquired by his father : And relied on the cases of *East-Woodhey*, *West-Woodhey*, and *St. Michael's Norwich*, and *St. Matthew's Ipswich* ; and a rule was granted and made absolute without opposition. And both orders were quashed.

CHAP.

G H A P. XIII.

For the Settlement of Apprentices.

See Title Apprentices.

Settlement by Hiring and Service.

What Persons are capable of gaining such a Settlement, See *pl.* 505.—General hiring, *pl.* 512.—Hiring for what Time sufficient, *pl.* 514.—Hiring retrospective, *pl.* 522.—Conditional, Virtual, or by Implication, *pl.* 523.—Of the Residence and Lodging requisite to gain a Settlement by Hiring and Service, *pl.* 528.—Distinction between Servants and Labourers, *pl.* 535.—Service where no Contract appears, *pl.* 544.—Service with Relations, *pl.* 546.—Hiring and Service for a Year, but not subsequent to the Hiring for a Year, *pl.* 548.—Same Service, but not in the same Place, *pl.* 552.—With different Masters under one Hiring, *pl.* 558.—Absence from the Service *pl.* 560.—Service continued beyond the Year, *pl.* 569.—Servant falling Sick, *pl.* 570.—Hiring, Service, or Discharge fraudulent or evasive of the Law, *pl.* 573.

Who

Who are capable of gaining a Settlement by Hiring and Service, See 13 & 14 Car. 2. c. 12. 1 J. 2. c. 17. And 4 W. & M. c. 11. 8 & 9 W. 3. c. 30. 9 & 10 W. 3. c. 11. 12 Ann. St. 1. c. 18.

BROOK's *Ab. title Labourers*, pl. 45. By the whole court, If I have a servant who is a single woman, she may marry, but her husband cannot take her out of my service.

Servant with child.

505. *R. v. Marlborough, Vin. title Removal*, 459. A servant hired, &c. shall not be removed from his master's service; and therefore if a maid servant be got with child, though she be therefore likely to become chargeable, yet she shall not be removed from her service: This is however good cause to discharge her of her service, and after her master has discharged her she may then be removed.

Widower having a child emancipated.

506. *Anthony v. Cardenham*, 12 W. 3. *Fort.* 309. A widower had a daughter, who was married into another parish and there settled, and then he hires himself into a parish. *Per Cur.* It is a good settlement, for it is within the meaning though not within the letter of the act. *Fol.* 139. *Pears Sett.* 7.

Servant marrying during his service.

507. *Farringdon and Witty, E. 1 Ann.* 2 *Salk.* 527. A servant was hired for a year, and after serving half a year married. The question was, whether the Justices, on complaint of the overseers, could make an order to remove him to the place of his last settlement. By the court: The contract between the master and the servant was not dissolved by the marriage, and admitting that it might be dissolved by an order made on complaint by the master; yet without that and upon complaint made by the officers only, it could not be dissolved: And the marriage doth not hinder the service, the contract continues, and if the man performs his service, he gains a settlement.

508. Case of the parishes of *St. Saviour's* and *St. Dennis, M. 1 G. MSS.* A man marrying within the year and continuing in the service the remainder of the year, loses not his settlement.

509. *R. v. Clent, M. 1 G. Fol.* 160. *A.* being an unmarried man was hired for a year in the parish of *Esley Lovet*, about the month of *August*, and served for the

the said year; but about the month of *February* then next following his said hiring he was married, and continued after his marriage to the end of the said year in his said service. The court of *King's Bench* held, that the hiring for a year, and service for that whole year, though the pauper married before his year was out gained him and his wife a settlement in *Emley Lovet*. Same resolution, *H. 11 Ann. See Fol. 159.*

510. *R. v. Hanbury. T. 26 & 27 G. 2. Burr. S. C.*
322. The pauper was hired for a year, from *Michaelmas* to *Michaelmas*: He came three days after the former *Michaelmas*, and staid one day after the latter; and was absent at different times near a fortnight, for which six shillings was abated of his wages. This service was in *Tardebigg*: From thence he went to *Hanbury*; where he was hired for a year, and served three quarters, and then married a woman with child. Of this his master complained to a Justice of Peace; who thought it sufficient cause of discharge, and allowed of his discharge; but made no order in writing touching the matter. The master hereupon discharged him against the pauper's consent. The court held, that the three days absence of the servant in the beginning of his service at *Tardebigg* was purged by the master's receiving him, and that he gained thereby a settlement in *Tardebigg*. But they held, that the discharge of the servant ought to have been done by the Justice as a magistrate, that is by an order: That it is an act of jurisdiction in the Justice, and therefore ought to be in writing. That the act of 5 *Eliz. c. 4. s. 5.* requires a sufficient cause of discharge, to be allowed by two Justices of Peace on hearing, and ordering of the matter. Now here does not appear to have been any hearing, certainly no ordering: Nor as Mr. Justice *Wright* thought, any reasonable cause; for what objection is the marriage? It is no misdemeanor: And the Justices can only discharge for misdemeanor. Therefore he is not discharged, nor (by Mr. Justice *Denison* and Mr. Justice *Foster*) can be thus discharged against his own consent; Consequently the settlement at *Hanbury* goes on, and is his last settlement.

A. is hired for a year, comes three days after the beginning, and is absent a fortnight in the middle and stays one day after the end of the year he then goes in to another parish, into another service, and marries before the expiration of his service; a Justice discharges him without making an order in writing.

511. *R. v. Banknewton, E. 31 G. 2. 2 Burr. S. C.*
455. *J. W.* on the 16th *February* 1738, by order of his father *H. W.* agreed with the pauper, whose wife was then living, that the said pauper should serve his father *H. W.* for a year from the 24th of the same month, at five guineas wages (when his said father's servant was to go away) if his father should approve of the terms. On the

A married man hires himself for a year, and previous to the commencement of the year his wife dies,

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the 18th of the said *February*, the wife of the pauper died without issue, and on the 24th of the same month, the pauper went to *H. W.* aforesaid, and told him what agreement had been made between *J. W.* and himself, and what wages he was to have, in case he the said *H. W.* should approve of the terms; and thereupon the said *H. W.* said, that he did agree to those terms, and the pauper served the year out. Lord *Mansfield*: It is clear, that the hiring was on the 24th; for the father might have dissented from the conditional agreement made by his son on the 16th; but the man was unmarried when the complete agreement was made: And the three other Judges concurred in the opinion that he thereby gained a settlement.

General Hiring.

A. is to have meat, lodging, &c. but no particular time is fixed.

General hiring or retainer is a hiring for a year.

512. *R. v. Wincanton*, *H. 24 G. 2 Burr. S. C. 209*. A boy of seventeen years of age offered himself to serve *S. W.* of *Charlton Howthorne*, who hired him to serve him in husbandry, and agreed to give him meat, drink, washing and lodging, and clothes when wanted, but no particular time was agreed on, and the boy apprehended that his master might have turned him off, or he might have gone away from him at their pleasure: However there was no agreement for that purpose; the boy continued in his service at *Charlton Howthorne* two years and an half, and received clothes from his master when he wanted them. To prove that a general hiring is an hiring for a year, *Bro. Abr. title Labourer*, pl. 20. was cited, pl. 23. *Per Hankford*, *Si Jeo face covenant oue un de moi server, Il viendra en mon service pour un an entier*. And in 1 *Inst. 42. b.* If a man retain a servant generally, without expressing any time, the law shall construe it to be of one year; for that retainer is according to law. One of the modern cases cited was, that of *Crawland v. St. John the Baptist*, in *Peterborough, Vin. title Settlement of the Poor*, where it was said, that the pauper served for a year, and the order was held good; because the law presumes, that he was hired for a year. Lord *Ch. J. Lee*. It is agreed, that a general hiring is a hiring for a year: Therefore the only question is, whether the circumstances in that case shew an intention to the contrary: The apprehension of the pauper is stated, indeed to have been to the contrary; but it is also stated, that there was no agreement for that purpose. Upon the

the whole, I do not see any circumstances to vary it from the general rule, which has been, and must be allowed.

513. *R. v. Berwick St. John, E. 33 G. 2. 2 Burr. A. was hired to*
S. C. 502. The head keeper of a lodge or *Cranborn* serve as keeper
chace, having lately parted with one *Hill*, who had been of a forest, and
 been some years an under keeper at the wages of three told, that he
 pounds a year, a livery, meat, drink and lodging, address- should want no
 ed *B. B.* the pauper in these words, "Do you like the encouragement,
 "life of a keeper?" And being answered in the affir- but no stipen-
 mative, he said, "then go into *Ned Hill's* place, and dation for food or
 "you shall want no encouragement, and I'll give you a lodging.
 "suit of clothes directly." The pauper served three years, *gains*
 was provided with lodging, &c. and at the end of the *gains*
 three years received 9*l.* for his service. He thought *gains*
 himself at liberty to quit the service at any time, if it had *gains*
 been disagreeable to him, and thought that he ought to *gains*
 have the same wages which *Hill* had, but did not con- *gains*
 sider himself as having a legal title to wages, since there *gains*
 had been no mention of any in the conversation before *gains*
 mentioned. Lord *Mansfield*: This man served three years, *gains*
 and received three years wages, but it is objected that he *gains*
 never was hired at all. It is admitted, that if he was hi- *gains*
 red at all it must be for a year. Upon this dialogue sta- *gains*
 ted it is a clear hiring; for *Hill* was a hired servant. *gains*
 And the other three Judges were clear of the same *gains*
 opinion.

For what Time sufficient. See *R. v. Bray*.

514. *Pepper Harrow and Frencham, T. 2 Anne Fort. Hiring from third*
 322. *A.* was hired on the third of *October* to *Michaelmas* of *October* to
 following, and now the court at first seemed to think it *Michaelmas* fol-
 fraud apparent, but afterwards held it to be no good lowing insuffi-
 hiring, and *Parker Ch. J.* said where shall we stop, if not cient.
 where the act directs? We are not to presume fraud, the
 Justices might have found it so. *Fol. 144.* In 10 *Mod.*
 and *Poor's Settlement* 80. This case is reported otherwise,
 but Sir *John Strange* agrees with *Fortescue* as to the de-
 termination of this case. See *Str. 83.*

515. *Dunsfold and Ridgewick, M. 9 Anne, 2 Salk. 535.* Hiring and ser-
 A servant was hired for half a year, served that time, vice for half a
 at the end of which he was hired by the same person for year, then for
 another half year, and served that time out. *Per Cur.* another half year,
 One entire contract as well as one entire service is re- held insufficient.
 quired by the statute. If a service under several contracts
 gains

Settlement by Hiring, &c.

gains a settlement, one who serves by the month, week or day, may if he continues a year gain a settlement. The Ch. J. observed that by the statute of *Eliz.* the retainer of servants was for a year, that the 14 *Ca.* 2. required forty days stay; which was inconvenient; for by gaining a settlement in forty days servants grew insolent, and the latter acts only turn the forty days into a year's service, and establish the hiring to be a retainer for a year, according to the statute of *Eliz.* *Fort.* 310.

Hiring from the fifth day after Michaelmas to Michaelmas, then a discontinuance of the service for one day, and then hiring for a year and service for eleven months.

516. Case of the parishes of *Wishford* and *Bretford*, 1712. at the *Lent* assizes at *Salisbury.* *Fort.* 311, a person five days after *Michaelmas* 1709, was hired from the said five days after *Michaelmas* 1709, to *Michaelmas* 1710, and on *Michaelmas* day 1710 he departed from his master and service, and was paid his wages to that time; and on the next day after his departure, he returned and covenanted with his said master to serve him there for another year, but a month or five weeks before the end of that year he departed from his service, and entered on another service, and the first master deducted out of the year's wages eight shillings for the month or five weeks which were wanting of the year. *T. Powel* Judge of assize held this to be no settlement, because there was no hiring for an entire year, with service for a year under the hiring. *N. B.* There was an interruption, and an interval between the service prior to the hiring for a year, and the service subsequent to that hiring.

Hiring cannot be for a time past, hiring for a year wanting two days insufficient.

517. *Coombe* and *Westwoodhay*, *H.* 5 *G. Str.* 143. In 1715. *Michaelmas* day was on a *Thursday.* A man was hired on the *Saturday* following to serve from the said *Thursday* after *Michaelmas* day, till the *Michaelmas* following. It was first questioned whether there was a complete hiring for a year; if the word *said* be rejected there wants a week; if it is retained and referred to *Michaelmas* day, then by rejecting the words after *Michaelmas* day, it will stand as a hiring for a complete year. By the court, It would be absurd to contract to serve from a time past, but if the word *said* be rejected the rest is natural enough. The other question was whether, admitting the hiring to be complete, there was a service for a year in pursuance of it, the contract being made upon the *Saturday.* But it was held that such a service would be insufficient; it not being in consequence of a hiring; there must first be a hiring and then a service, not *vice versa* a service and then a hiring.

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518. *R. v. Newton, M.* 14 G. 2. Burr. S. C. 157. It was holden by the court, that a custom to hire servants at a statute, to serve from that day to a saint's day, being the *Wednesday* preceding the next annual return of the statute, and two or three days short of a twelvemonth does not enable the servant to gain a settlement under such hiring, in opposition to an express act of parliament to the contrary.—It was hinted by the court, that if a *certiorari* commands the Justices to return the sessions order, *cum omnibus eum tangentibus*, the original order of removal ought to be returned. See 13 G. 2. c. 18. s. 5.

Custom to hire servants of a statute fair, &c.

519. *R. v. Bishops Hatfield, H.* 31 G. 2. 2 Burr. S. C. 439. J. A. was hired at 5*l.* for one year, (from *Michaelmas* to *Michaelmas*) to one *Parsons* with liberty to let himself for the harvest month to any other person; he accordingly served *Parsons* till the harvest month, a little before which he let himself to one *Thrale* of the same parish for the harvest month, and went with the knowledge of his master, and worked with the said T. for the harvest month, and received wages for the said harvest month. In the said harvest month he brewed for *Parsons*, and after the harvest, served him for the remainder of the year. He lodged in *Parsons* house the whole year, at the end of which he received 5*l.* wages. Lord *Mansfield*: it is only a hiring for eleven months; the harvest month is the principal month in the year. If we allow this, we shall not know where to stop. To which Mr. Justice *Denison* and Mr. Justice *Foster* assented. And Mr. Justice *Wilmut* observed that it turns upon the obligation that the servant was under, and the servant not being obliged to serve a whole year, this was not a hiring within the act.

Hiring with liberty to let himself for the harvest month insufficient.

520. *R. v. Newstead, T.* 10 G. 3. Two Justices removed F. D. from *Newstead* to the parish of *Holy Island*; and the sessions discharged that order. Case stated was, that the pauper hired herself at *Whitsuntide* 1767 to T. H. of *Holy Island*, to serve him for a year from the said *Whitsuntide* to the *Whitsuntide* following, at certain wages; and entered upon the service at *Whitsuntide* 1767, and continued till *Whitsuntide* 1768, when she received a year's wages. It hath been usual in that county to hire servants from *Whitsuntide* to *Whitsuntide*, and such hiring and service have always been looked upon by the contracting parties as a hiring and service for a year, and the master always pays a year's wages without diminution or addition, whether the time from *Whitsuntide* to *Whitsuntide* be more or less than 365 days. In this case the space

Hiring for a year from *Whitsuntide* to *Whitsuntide* is sufficient.

Settlement by Hiring, &c.

of time from *Whitsuntide* 1767 to *Whitsuntide* 1768, consisted of less than 365 days and was not a complete year, and therefore the sessions quashed the order. *Mr. Dunning*: If they have stated an agreement for a year, it will be determined to be such, but it is stated that he was hired from *Whitsuntide* 1767 to *Whitsuntide* 1768. Had it been stated that he was hired for a year and served till *Whitsuntide*, it might have been a settlement; because this court has relaxed the rule with regard to the service. It has been resolved, that the custom of the country is not sufficient to make a defective hiring a hiring for a year. The sessions have stated indeed that she hired herself for a year, but have gone on to say that it was from *Whitsuntide* to *Whitsuntide*, and have expressly stated that this was not 365 days, and that this was a customary hiring. *Lord Mansfield*: In the bishoprick of *Durham* there are many clergymen; who compute by the ecclesiastical year, and that is from one moveable feast to another. Suppose a servant was hired for leap year, except one day: that would not be a sufficient hiring; so that duration for 365 days is not the criterion of a good hiring. *Mr. J. Blackstone*: If that was the criterion, no settlement could be gained by serving an office, for almost universally the appointments to them are from one moveable feast to another. *Mr. Dunning*: All those appointments are for a year, and there is only a defect in the service; they are all annual offices. *Lord Mansfield*: I think this was a hiring for a year; it was expressly stated to be for a year; there might if necessary be a distinction between *Whitsuntide* and *Whitsunday*, but it is not necessary; and I am glad to find that no case can be produced of a determination upon such a hiring. The order must be quashed.

Hiring from
Whitsuntide to
Martinmas, and
from said Martinmas to
Whitsuntide, and
service under such
hiring, insufficient.

521. *R. v. Lowther*, H. 11 G. 3. The special case stated, That the pauper at the age of twenty-five hired herself as a servant to one *William Thomson* of *Hackthorpe Hall* in the said parish of *Lowther*, from *Whitsuntide*, as the pauper believed, about four years ago, to *Martinmas*, and before the expiration of that term, hired herself again to the said *Thomson* at *Hackthorpe*, for the succeeding half year from the said *Martinmas* to the *Whitsuntide* following; and in pursuance of these hirings, served the said *William Thomson* at *Hackthorpe* afore said in the said parish of *Lowther*, for the complete year, viz. from *Whitsuntide* to *Martinmas*, and from the said *Martinmas* to *Whitsuntide*, without leaving her service, and received two half years's wages: That after such service, the pauper went upon a visit

visit to a relation who lived in the parish of *Great Salkeld*, and being likely to become chargeable there, was removed to the parish of *Lowther* as her last legal settlement, not having gained any subsequent one, nor having any other settlement in the last parish of *Lowther*: That the usual custom of hiring servants in *Cumberland* is from half year to half year: That it has been the invariable practice of the quarter sessions of *Cumberland*, as long as can be remembered, to adjudge the said hiring for two successive half years, and service in pursuance thereof, for one whole year with the same person and in the same place should be a settlement under the several acts of parliament made relating to the settlement of the poor. And the court of sessions being of opinion, "that the said *Catherine Nicholson* gained a settlement thereby, in the said parish of *Lowther*, doth order that the said warrant of removal be confirmed." Mr. *Davenport* had on *Monday* next after 15 days of *St. Hilary*, in this term, moved to quash both these orders, as here was no hiring for a year. Mr. *Wallace* was to have now shewed cause on behalf of the parish of *Great Salkeld*; but he acknowledged that the orders could not be supported, there being no hiring for a year. The rule was made absolute for quashing both the orders.

Hiring retrospective.

522. *R. v. Ham*, *M.* 25 G. 2. *Burr.* S. C. 304. Mr. *Port* of *Ham* hearing that the pauper was a likely boy to serve him as a postilion, sent to the pauper's father, to have the boy upon liking. After the boy had served eight weeks upon liking, Mr. *Port* hired him for a year to commence from the beginning of the said eight weeks; he served a year and ten days including those eight weeks. The court held this case to differ from all the former cases. The sole question is whether here be a hiring for a year. It is agreed that there must be a hiring for a year, and a service for a year to gain a settlement, and that a retrospect will not do. The latter is the case here; for the lad came upon liking, and at that time there is nothing stated of a hiring, nor till eight weeks after, during which time both parties were at liberty. Mr. *J. Foster*, thought that the cases of *Lid- naye* and *Stroud*, *Chepping Wycomb* and *New Windsor*, had carried the matter as far as possible; and that if they were new questions he should doubt those resolutions. But both these were hirings for a year previous to the service, and the conditions were performed; that the

A. serves eight weeks upon liking, and then is hired for a year to commence from the beginning of those eight weeks which were then expired, does not gain a settlement.

See next section]

safest way is to adhere to the words of the statute; for refinements upon these questions have produced an infinity of questions and difficulties.

Hiring Conditional, Virtual, or by Implication.

A. is hired for a quarter of a year, and if her master and she liked one another to continue for a year.

523. *R. v. Lidney*, T. 6 G. 2. *Burr.* S. C. 1. *Martha Brewer* was hired in the parish of *Stroud*, for a quarter of a year; and if her master and she liked one another she was to continue for a year, and to have 3*l.* for her year's wages. Having continued in the said service one whole year, she received the said wages of 3*l.* It was insisted that as it was in *M. B.*'s election during the first quarter whether "she would continue or not," she consequently could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year, as her master and she did like one another, and a year's service was actually performed under it. 2 *Sira.* 950.

Hiring for a month upon liking, and the service to be terminated upon a month's warning or a month's wages being given by either side.

524. *R. v. New Windsor*, H. 8 G. 2 *Burr.* S. C. 19. The pauper was hired in *August* to serve *A. B.* at *Thorpe*, and was to go into his service a month upon liking, and was to have 5*l.* a-year wages, but was to go from her service upon a month's warning, or a month's wages being given by either side; she continued about two years in the service, and received her wages quarterly. Lord *Hardwicke*: I think it reasonable that the expression to have 5*l.* a-year wages, should be understood to fix the duration of the service, unless it should be sooner determined. The other Judges concurred, and Mr. Justice *Lee* observed that it appears upon the face of this special order, that she was legally settled at *Thorpe*, for it is stated, that she was hired to *A. B.* at *Thorpe*: Now a general hiring is a hiring for a year.

525. *R. v. Inhabitants of Putney*, E. 13 G. 2. *MSS.* 2. Special order of sessions states, That *A.* the pauper at 14 years old went to live with Mr. *Falconer* in *Wandsworth* in 1726, where he had meat, drink, and lodging; and Mr. *Falconer* bought him nine shirts, and in about six weeks or two months after his first coming, *F.* told him that if he staid a year and behaved himself well, the next year he would give him a full livery and wages; and that afterwards he lived a year and four months with *F.* and lived in the whole with *F.* in *Wandsworth* one year and six months, and then parted from *F.* and received from Mr. *Snelling*,

Snelling, Falconer's partner, one guinea and a half, and that there was no other contract for hiring appeared, or payment of money otherwise than as above: Therefore the sessions allow the appeal of Wandsworth parish, and quash the order of two Justices for removal from Putney to Wandsworth. Ch. J. There is no doubt at this time of day to be made, but that in order to gain a settlement there must be a hiring for a year; the question is, whether in point of construction of the fact returned in this order, it does amount to a hiring for a year? It is not stated in the order that there was an express hiring, and it is objected that this cannot be considered as a hiring which imports a contract; for nothing is said in this order of the assent of the boy: But the question is, Whether the contract afterwards is not an assent in point of fact, as much as if he had assented at the time? In the case of *New Windsor*, The order stated that *A.* was hired in *August 1731*, to serve *B.* but was not hired for any determinate time, and that she was to have *5*l.** a-year wages; that she was to be one month with *B.* upon liking, and that *B.* might discharge her at a month's warning, or on paying her a month's wages; this is all that was stated to prove a hiring for a year; for as to the service it is immaterial whether it was one or several hirings. *Et per Hardwicke Ch. J. & tot Cur.* This did amount to a hiring for a year; and in that case was cited the case of *Lidney*. *A.* was hired for a quarter of a year, and if the servant and master liked one another, the servant was to continue for a year, and to have *3*l.** wages; that she continued for a-year, and it was held a good settlement: Now these cases seem to be very strong that it is to be considered as a hiring when the conditions are performed; for if he behaved well he was to have an additional reward, for he had a reward before, which was his meat, drink, and lodging, and the nine shirts: Therefore upon these authorities I think this is a hiring for a year within the statute, for if we go only according to the strict words, that a man must hire expressly for a year, we shall defeat a great many settlements; and as this was a conditional hiring, and the condition performed, I think it is an absolute hiring for a year. *Page J.* This before the promise was no hiring, only he was taken upon charity, and afterwards the master promised, if he behaved well he would do so and so; this seems to me not to be a hiring, only a promise of reward. *Chapple J.* This is certainly a hiring, but there

Settlement by Hiring, &c.

is some doubt for how long, the act of parliament requires a hiring for a year; at first he is under no contract, but has meat, drink, and lodging during his continuance with F. and F. told him, that if he staid a year and behaved well, the next year he would give him a full livery and wages; Now it seems to me the boy was at liberty whether he would stay or not, and there was no obligation upon him to stay a year, he might if he would, and if he did stay and behave well, then the next year the contract was to take place: This is a contract by his staying the year; but there is no service for a year under any contract; here was a hiring for a year; service may be under different hirings; but it must be under some contract or contracts, and for a year; therefore, as this contract did not commence till the next year, I am in doubt whether this is such a hiring and service for a year as the act requires. Ch. J. I apprehend that if there be a contract for a year, it is no matter whether the service is under the particular contract; for all he requires is, that he shall be a hired servant, and the reason is, because he shall be intitled to a settlement, if any body will put such a confidence in him as to hire him; and the reason he is intitled to a settlement on account of the service is, because of the benefit the parish receives by his labour. The cases are, if one is hired for half a year and serves the half year, and afterwards is hired for a year, and serves half that year, it will be sufficient if he serves a year in the whole. Page J. He was not a servant under any hiring for a year. Cur. *advizare vult.* This case being argued again, the Ch. J. said, This is nowhere stated that the boy was a servant, but only that he lived with *Falconer*: This is not a proper manner of stating the fact, they should state whether he was a servant or not; Indeed I have no great doubt but he was there as a servant. The main question is, whether here is sufficient for the court to say, this is a hiring for a year? There is no doubt but there must be a hiring for a year, and a settlement for a year to make it a settlement. The act is, 3 & 4 W. & M. If any unmarried person, not having a child or children, shall be a lawful hired servant in any parish or town for one year, such service shall gain a settlement without notice. The construction of the act has always been, that if one is hired for a year, the words *such service*, are answered by a service for a year, though it is not pursuant to the hiring; that is, any

Servia

any service where there is a hiring for a year. By the subsequent act 8 & 9 W. 3. they don't gain a settlement unless they continue in the same service for a whole year; this has been held an explanatory act, and though it is to be construed strictly, yet not so but that the intent may be answered: So where a servant is assigned to the assignees of a farm, that is considered as the same service, being under a contract whereby he is bound for a year. The question then is, Whether this is a hiring for a year? I shall take it that he was there as a servant, and as if a service had been stated: If it is not to be considered in that way, the order must be sent down again to the sessions; this seems to be the common and usual way of hiring, a general retainer of a servant though there is no particular time agreed ~~and~~ a hiring for a year; then it is that *P.* told him if he staid a year and behaved well, the next year he would give him a full livery and wages: He comes and serves him. This must be considered as a hiring for a year, though not particularly said so, and he staid with him above a year after this; so that is a service for more than a year. In *R. v. Lidney* there was no hiring for a year, only for a quarter, and if they liked she was to continue for a year and to have three pound wages: So there was no express hiring for a year, but for a quarter only, and there the servant liking and continuing, it was determined that it was a hiring for a year. So in *R. v. Windsor* it was no express hiring for a year, only hiring to serve *B.* and to have five pounds a-year wages. As here is an agreement to give a servant livery and wages, I don't know that it is necessary in order to make it a good hiring: That the *quantum* of wages must be agreed, if the words that he would give him a livery and clothes are a retainer, this is a good hiring for a year. *Co. Lit. 47.* Upon these cases of hiring we must consider these contracts, which don't specify any time; but where it is a hiring generally, it is to be understood as a hiring for a year. If this is a good hiring for a year, then there is sufficient to make it a settlement, for there appears to be a service for a year, taking it that he was there as a servant; I confess that is not clearly stated, but they have specified the livery and wages and this looks like a service. *Page J.* I am of the same opinion; a hiring generally is to be taken for a year, without mentioning the year particularly. *Oba- ple J.* I think this a hiring for a year; it was, if he staid a year and behaved well, the next year he would give

him a full livery and wages; here the year is specified; and he lived with him sixteen months afterwards; so that this seems to be a plain contract as the event did happen: That he did live with him for a year, so the hiring is good as to the service; it is not material that we should be informed when the first contract began or was determined; so that there clearly appears to be a service under some contract, the year shall commence from such a declaration of the master, and he served a year above that. *Wright J.* There is a doubt that this is a hiring, but the question is, When it is to commence, whether from the time of the discourse, or from the end of the year? and the whole depends upon that, for there is no hiring for the first year, and so it is no service at all unless it is under some hiring, contract, or retainer; next year was the year after that in which he was to stay and behave well, so that after the commencement of the next year he only served six months, and so there is no service for a year under a hiring; for in *Lidney* and *Stroude*, and *Windsor* and *Wickham* there was an actual hiring stated. I own I have some difficulty to collect a hiring from this order, for the first year; there is no doubt but that is a hiring upon the words "next year he would give him a full livery and wages," but if there is no hiring for the first year, there is no service for the first year; and so a defect of service, it being only six months after the first year: Therefore as at present advised, I think this is not a settlement. *Ch. J.* If one is hired from *Michaelmas* to *Christmas*, and serves that quarter, and then is hired from *Christmas* to *Christmas* and serves three quarters of that upon the second hiring for a year, this is a good settlement, for it complies with the act being hired for a year into a parish, and it was a sufficient service, as there had been a hiring for a year: The legislature had two reasons for making this a qualification for a settlement. First, The credit of being hired for a year. Second, The benefit to the parish by an actual service; and so in this case it is answered, if here is a hiring and an actual service for a year; but when the service is precedent to the hiring and any contract for the service, whether that should gain a settlement, I don't know. If this had been properly stated we might have judged of it; so it is the best way to send it down again, and if it appears he lived the first year under any contract, the promising to give him a full livery and wages the next year, amounts to a hiring for a year, and the service, part in one year, and part in another, will be sufficient;

cient; I shall never consent to quash this order as it now stands. Upon which it was ordered to be sent down again to the sessions.

526. *R. v. St. Ebbs, H. 22 G. 2. Burr. S. C. 289.* Caleb Guy went to *Holywell* to be hired to *T. W.* who lived in and was an inhabitant of *Holywell*, and being asked what he would give, he said, He would not give him more than he gave to his former boy, which was twenty shillings a-year. He was then hired in this manner; was to come for a quarter of a-year, and to have after the rate of twenty shillings a-year, and if he and his master liked each other, was to continue on. He continued a year and a half over and above the said quarter, without any farther or other hiring, and received his wages as he wanted them. The court held this to be a settlement in the parish of *Holywell*.

527. *R. v. Oxleworth, T. 24 & 25 G. 2 Burr. S. C. 302.* *W. Hewitt* agreed with *T. Palsor* of *Wotton*, clothworker, to serve him in his business for three years at so much by the week, which was to increase each year. He was to work twelve hours in a day, and was to receive a penny for every hour he should work more. His master was to retain sixpence a-week as a deposit, which was to be returned to *Hewitt*, at the end of the term if he performed the agreement, or if his master should discharge him before the end of the three years, but was to be kept by *Palsor* if *Hewitt* should quit the said service before the end of the term. And it was understood between them, that *Palsor* might turn *Hewitt* out of his service at any time during the term, paying him the sixpences so retained. *Hewitt* worked under the agreement for about six months, and then being ill absented himself about three months, and then returned, was received and continued to work for *Palsor* under the agreement, for three quarter of a year, till the time of his being removed by the order. During the whole time he lodged in the parish, but not in *Palsor's* house. The counsel who supported the orders, insisted that the liberty of quitting the service vitiated the settlement, alledging that the hiring ought to be absolute and conclusive. Lord Ch. J. *Lee*: How could the Justices remove him out of the service, it appears that the man was actually in the service at the time of the removal? Mr. J. *Wright* concurred, and Mr. J. *Denison* and Mr. J. *Foster* being silent, the order was quashed.

* The records have been searched; But it does not appear whether this case ever came before the court again.

Hiring for a quarter of a year with wages after the rate of twenty shillings a-year, and if they liked to continue a year.

He was to work twelve hours in a day, and was to receive a penny for every hour he should work more. His master was to retain sixpence a-week as a deposit, which was to be returned to Hewitt, at the end of the term if he performed the agreement, or if his master should discharge him before the end of the three years, but was to be kept by Palsor if Hewitt should quit the said service before the end of the term.

Of the Residence and Lodging requisite to gain a Settlement by Service.

A house stands in two parishes, the master lodges in one parish and the servant in the other who gains a settlement where he lodges.

528. Case of the parishes of *Feverham* and *Graveny*, *T. 5 G. Fort. 221*. J. S. lives in a house that was two thirds in the parish of *Graveny*, and one third in the parish of *Feverham*. The master hires a maid-servant for the whole year, and she is found to lodge in that part of the house that is in the parish of *Feverham*, and the master lodged in that part which is in *Graveny*. The court seemed to think that the servant's settlement was in *Feverham*; but the parties by leave of the court referred the matter to the Judges of assize. And as I have been informed by Mr. *Marsh* who was counsel in the cause, the Judges of assize were both of opinion that the servant's settlement was in *Feverham*, in the parish where she laid, and both parties acquiesced under that opinion.

A man is servant to two masters, he gains a settlement where he lodges.

529. *R. v. Eldersley, M. 4 G. MSS. A.* hired himself for a year to be warrenter in the parish of *Eldersley* in a warren there, to joint occupiers of it, who lived in two parishes distant from the parish of *Eldersley*. He dieted and lodged for eight weeks with one of the occupiers, (and for the rest and last part of the time) in the warren. *Per Cur.* His settlement is in *Eldersley*.

A man is hired for five years to work in a glass-house, and is to find his own diet, lodging, &c.

530. *Radcliff v. Whitechaple, E. 10 G. MSS. Thomson* and his wife, and three children were removed from *Radcliff* to *Whitechaple*. The case was this, *Thomson* was hired for five years at *Whitechaple* to work in a glass-house, and was to have ten shillings per week; and to provide himself with diet, lodging, &c. It was insisted that the meaning of the statute was for menial servants; that this man was not part of his master's family, and might have been removed, whereas a servant is not removeable. *Per Cur.* The act does not prescribe any terms to be observed between master and servant. In this case the hiring is different from the usual way, but he is still a servant. The act requires a hiring and service for a year only, but this is stronger, for five years, and service likewise ensued.—If the pauper had never lodged forty days in the parish, the exception had been good. In *1 Mod. 369*. This case is wrongly reported. It appears by *Fol. 158*, that the order set forth that he lodged the whole time in *Whitechaple* except one month, and that the court held him to be settled there.

531. *R. v. Spittlesfields, M.* 11 G. MSS. The pauper was hired in 1680 to serve for five years, which time he accordingly served in the parish of *A*; but lodged the whole time in the parish of *B*. By the court: He must be settled at *B*, because of his inhabitancy there. A man cannot be settled but where he inhabits, and although the word "inhabit" is not in the clause of settlements of servants, as it is in that of apprentices, yet it must be understood so, because every person that is settled any where must be settled as an inhabitant. See *R. v. Whitechapel, Fol. 158*. *N.B.* That case is stated wrongly in 1 *Mod.* 369.

532. Case of the parishes of *Urdisland* and *Leominster, H.* 6 G. 2. MSS. It was holden by the court, that if a servant is hired for half a year, and before the expiration of that time is hired for a year, if a whole year's service is completed under both these hirings it is sufficient, but that there must be a continuance of forty days after the hiring for a year, or else it is no settlement though there had been a whole year's service before. See *Eardisland* and *Leominster* in *Strange's Reports*.

533. *R. v. Greenwich, M.* 18 G. 2 Burr. S. C. 343. The special order states that the pauper is the daughter of *George Wall* deceased; who in his lifetime declared to a witness now examined, that he had hired himself for a year, and served a year as a livery servant, at 7*l.* wages, to *Captain Saunderson*, commander of the *William and Mary Yacht*, who had a house and family at *Greenwich*, and resided there when not absent on the King's service; and that his master made frequent voyages to and from *Holland*; and that he always attended him in the same; that he was never forty days together at *Greenwich*, but during his service he might be there forty days at different times. Objection was taken to this order, that at most it only states evidence, not facts; upon being sent down to the sessions, the whole was stated as facts, and particularly that he was forty days at *Greenwich* at different times during his service; and the order was affirmed.

534. *Hawking v. Eastbrooke, H.* 27 G. 2. MSS. Defendant agreed by articles to pay the plaintiff a sum of money, if his son who was his servant absented himself from his master's service within five years without leave; action of debt was brought for this penalty. Defendant pleaded "no departure." It came out in evidence that the defendant's son did lie out a nights, and absented himself from his master's service, but that his master always received him again. The question was whether such acceptance

ceptance did not dispense with the forfeiture; and on a case made it was determined by the court, that when the contract was once broken and the sum once forfeited, the plaintiff had an interest vested in him, which could not be discharged but by release or satisfaction of it; and if it was a good excuse, defendant ought to have pleaded it.

Distinction between Servants and Labourers.

Every hiring within the statute 3 & 4 W. and M. must be reciprocal.

Note the report of this case by Skinner is totally the reverse of what it ought to be.
Hiring of a servant, and service must be for a year.

Person hired for a year to spin yarn at eighteen pence a stone, she thought herself at liberty to be absent as long as she pleased.

535. *R. v. Hamlet of Walton, Carth. 400. P. 9 W. 3.* *Farrison* had gained a settlement in the hamlet of *Walton* by living there with *Sir Paul Jenkinson* as his footboy. Then *Sir Paul* put him out to one *Thorpe* a barber (who lived in *Chesterfield* * but out of the hamlet of *Walton*) for one year to learn to shave; *Thorpe* was to have the benefit of the money received for the boy's work and to teach him; he lived with the barber one year, but notice was not given to the parish. *Per Cur.* This is not within the intent of the statute 3 & 4 W. & M. Here was no reciprocal contract between the boy and the barber, who had no remedy to compel him to serve, and every hiring within the statute must be reciprocal. The boy was in the nature of a scholar.

536. *R. v. Horsham, M. 12 Anne, Fol. 143. J. C.* came on the 19th February 1710 from *Shipley* to *Eastbed* in *Horsham*, and bargained with him to serve him till *May* tide for one shilling a-week, and at *May* tide he bargained to serve him to *Lady* day next for twenty-six shillings wages; and at *Lady* day agreed to serve him till *May* tide next at three shillings a-week, and at *May* tide agreed to serve till *Lady* day next for twenty-six shillings, and then till *May* tide at three shillings, and then he staid a fortnight at one shilling a-week. The court of *King's Bench* determined that he did not gain a settlement by this hiring and service, for that the hiring and service must be for a year.

537. *R. v. King's Norton, T. 13 G. 2. Burr. S. C. 152.* The pauper was hired for a year at *Camden*, to spin yarn at eighteen pence per stone, and was to provide herself with victuals and lodging where she pleased. She spun the whole year, and boarded and lodged at her master's,

* *Walton* is a hamlet in the parish of *Chesterfield*, but maintains its poor distinctly.

allowing

allowing two shillings a-week for the same: upon examination she said that by her contract she thought herself at liberty to play or to be absent from her work, as long as she pleased being to be paid at a certain rate, only that she was not at liberty to work for another master. *Per Cur.* This is a settlement at *Camden*, for in fact she was hired for a year and served it there. Mr. J. *Chapple* observed, that the liberty she thought she had of playing and being absent, depended upon her own apprehension only; but was no part of the contract. *Str.* 1139.

538. *R. v. Wrington*, M. 22 G. 2. Barr. S. C. 289. The pauper being settled at *Wrington* worked with *N. M.* in *Winford* at burling cloth by a weekly hiring or agreement, at the wages of one shilling and sixpence each week in the winter, and two shillings in the summer. On the *Saturday* in each week her master, when he paid the pauper her wages for that week, said to her that she should come the week following, which she accordingly did, and renewed the contract for the week ensuing in the same method; she continued to work in *Winford* with the said *N. M.* in this manner, for one year and upwards. But during that time constantly returned in the evening, and lodged with her aunt in *Cheumagnus*, and also resided with her on *Sundays* during the said time. On the last *Saturday* of the said service the pauper covenanted to serve the said *N. W.* for a year for the wages of 1*l.* 10*s.* and immediately entered upon the service, and continued therein for eleven months, and then left her service with consent of her master, who paid her the full proportion of her wages for eleven months. Lord Ch. J. *Lee* and Mr. J. *Wright*, said their only doubt was whether on these first hirings, the girl was to be considered as a hired servant within the acts, or whether only as a weekly labourer precedent to her being hired for a year. Mr. J. *Denison*: The act of parliament plainly means a hired servant, who is part of the family wherever he lies. These clothworkers hire perhaps a hundred children in different parts of the work, it would be very inconvenient, if the hiring any of them for a year after some time of service under a weekly hiring, and then subsequent service of only a single week under that yearly hiring, should gain them a settlement. Mr. J. *Rafter* thought the cases had been carried full far enough already (*R. v. Aynhoe*) and had no doubt, but the first hiring ought to be *eiusdem generis* with the last. A hired servant is always under the government, discipline, and controul

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Settlement by Hiring, &c.

of the master even on *Sundays*; but this child was not at all in this master's service either on nights or on *Sundays*. The other Judges concurring, the order affirmed.

Child hired to work at a silk-mill for 3 years, for 11 hours each day, to be at liberty the rest of the time.

339. *R. v. Macclesfield, E.* 31 G. 2. 2 Burr. S. C. 458. A child of eight years of age was hired to work in a silk-mill for three years, the master was not to find diet or lodging, the service was to be eleven hours in the six working days, and all the rest of the time, as well as on *Sundays*, the child was to be at its own liberty; the child lodged with its mother, who received his wages, and also an allowance for the child from the parish. Lord *Mansfield*: This is undoubtedly no apprenticeship, it is in the nature of a contract from week to week. Mr. *J. Foster*: A service sufficient to gain a settlement, must be such a state during the whole time. But this child was to be his own master the greatest part of every day, and the whole of every *Sunday*. Mr. *J. Wilmot* concurred, that this service did not gain a settlement. The child's lodging in his mother's house, would have made no difference: But this is not a hiring and service within the 3 & 4 *W. & M.* which intends only such services, where the servant is under the command and controul of the master during the whole year; but this servant seems to have been hired for the particular purpose of working in the silk-mills at certain hours, he was not in a continued and abiding state of servitude during the whole year.

Hired to work with a glazier summer and winter at 6 shillings a-week, and his board lodging and washing.

540. *R. v. Dedham, M.* 10 G. 3. S. B. let himself in April 1767 to *J. M.* of *Dedham*, plumber and glazier, to serve him in his trade, at the wages of six shillings a-week, board, lodging and washing summer and winter. He served under this agreement eleven months, when *J. M.* having taken an apprentice told *S. B.* that he must lodge out of his house, upon which *S. B.* demanded sixpence a-week more, alledging, that he would otherwise quit the service on account of his master's having withdrawn from the original agreement: He continued to receive the additional allowance, till the September following; during the whole of the service his master paid him his wages in different proportions as he wanted them, and he apprehended himself bound by the said hiring to continue with his master a year. Lord *Mansfield*: It seems impossible to make this a hiring for a year, the court has always been very strict, in respect to the hiring, as where a man was hired for a year, but to be at liberty in the thirteenth month: Here the agreement is for six shillings a-week, which means, that if the

servant

servant should stay till winter, his wages should continue the same; but no action would lie, for either party against the other, as upon a year's contract; besides at the end of eleven months they both came to a new agreement. Mr. J. Yates: In the case of the *King* and *Macelesfield*, the *Sunday* was to be a day of liberty; this was understood to be no settlement. In the present case if the master had not paid sixpence a-week more at the time of this conversation passing, the servant said, he would have quitted the service. If it had not been for this circumstance, I should have inclined to have thought it a hiring for a year: But it seems plain from this part of the case, that neither of them considered themselves as bound by the former part of the contract, Mr. J. Aston: As to the circumstance of the pauper's apprehension, it was determined in the case of *R. v. King's Norton*, to be of no avail. Mr. J. Willes concurring, The order was quashed.

541. *R. v. Bradnitch*, H. 10 G. 3. The pauper was hired into the parish of B. as a husbandman, at two shillings and sixpence a-week; his master and he were to part upon either of them giving a fortnight, or a month's notice, and he lived so about seven years, and received his wages sometimes at the end of the week, sometimes of a fortnight, or of a longer time. Both the master and servant thought themselves at liberty to part upon a month's notice. The sessions held the pauper to be settled at *Bradnitch*. Mr. Heath, in support of the order of sessions, insisted, that upon this state of the case, the court could not give judgment, for it is stated, that the hiring was for a week with liberty to part upon a month's notice, which is contradictory; for that if it was a hiring for a week only, they would be at liberty to part at the end of every week, and that the facts here being all equally authentick, none of them can be rejected; and therefore no judgment can be given upon this case as it is stated: That if the court should think him wrong upon that point, yet he insisted, that this was a hiring for a year, though the wages were to be paid by the week; every general retainer of a servant in husbandry being a retainer for a year. The ancient statutes require, that such persons should be hired for a year; and therefore the law construes such an indefinite hiring to be a hiring for a year. The case of the parish of *Dedham* differs from the present in a material circumstance, that the servant in that case was a mechanick; whereas the present pauper being a servant in husbandry

Hiring for 2 s.
and 6 d. a-week
to part at a
month's notice.

Settlement by Hiring, &c.

was, exactly within the perview of those ancient statutes, By the court : Unless there is a mutual obligation for a year, there can be no settlement gained under such a hiring and service. The order of sessions must be quashed.

542. *R. v. St. Agnes, T. 10 G. 3.* The pauper's father, when the son was 15 or 16 years old, made a contract with one Mr. *Nankinville* of the parish of *Perinabulon*, for his son to work at Mr. *Nankinville's* stamps in the parish of *St. Agnes*, for manufacturing tin for one year, at the yearly wages of 5*l.* In pursuance of which contract, pauper served said *Nankinville* at his stamps for said year, by working therein daily, except holidays and *Sundays* according to the custom of tanners : His father received his wages as he had occasion for them ; but during the said year the pauper eat, drank, and lodged with his father in the parish of *St. Agnes*, serving his master at his stamps aforesaid, and in no other capacity, nor ever became part of his family. At the expiration of the first year, a like bargain was made for a second year for 7*l.* and a like service under it, and soon for another ; but during the last two years also, pauper served his master at said stamps and in no other capacity, continuing to eat, drink and lodge with his father, and never became part of his master's family, and having holidays and *Sundays* at his own command for the three years, as is usual for persons hired in such employ. Mr. Serjeant *Burland* arguing that this was a good hiring for a year, insisted, That it was not like the case of *Maelisfield* : That it was a complete hiring for a year, and no exception in the original hiring of *Sundays* and holidays : That if this sort of exception from labour on *Sundays*, was to make the hiring to be for less than a year, no labourer or working servant could ever be hired for a year, for they always understand *Sundays* to be appropriated to themselves. To the other case he relied on the *King* and inhabitants of *Norton*. Mr. *Dunning*, *contra*. This is more the case of a journeyman than a yearly servant ; between which characters the court has often made a clear distinction, that the master had no power to employ the pauper but at the stamping mills ; but a servant is to be employed in any business, and confined to none in particular : That it was fully understood, that the pauper was to be free from employ on *Sundays*, as if it had been express'd, and it is strongly stated to support the idea of an exception in the hiring, that the pauper had *Sundays* and holidays at his own command :
That

That the exemption from service on particular days did not proceed from the favour of the master, but was understood to be stipulated for. Lord *Mansfield*: The case is too plain to admit of a question: If there had been an exception in the original hiring, to be sure it would have been bad; but if the master permits the servant to have *Sundays* and holidays of his own will, or according to the custom of the country, it will not vitiate the hiring. In the case of *Macclesfield* there was an express exception in the hiring. Mr. *J. Aston*, of same opinion. The case of the *King* and *Hatfield* is strong to this, and has settled the point; if the obligation be for a whole year, it is sufficient; permission afterwards is immaterial. Mr. *J. Willes* and *Aston* of same opinion.

543. *R. v. Buckland Denham*, *H. 11 G. 3.* Two Justices removed *Jos. Hibbard* from *Buckland Denham*, to the parish of *Mells*, which order the sessions quashed, subject to a special case signed by the counsel for the respondents, but refused to be signed by the appellant's counsel; the special case is in the words following: That the pauper lived with his father, in the parish of *Mells*, where he was settled, until he was about 17 years of age, when his father hired him to—*Adams* a clothier of *Buckland Denham*, and an agreement was made in writing, and left with the master: That the master being served with a *subpoena* to produce such writing, and being examined on oath said, That he had searched amongst his papers for it, but could not find it; but being charged to the parish rates of *Buckland Denham*, he refused to give evidence of the contents of the said writing, on which the contents thereof were by the pauper's father proved to be, That the said *Adams* should teach the pauper the business of a sheerman, and that the pauper should serve the said *Adams* as a sheerman for five years from thence next ensuing, for which he was to have for the first half year the weekly wages of 3s. and to be advanced sixpence weekly wages every succeeding half year, and was to find himself in meat, drink, washing and lodging: That the pauper was to work sheerman's hours only, which are uncertain: That the pauper's father declared, that though he could not say whether it was or was not part of the writing, yet it was understood, that the pauper should be at his own liberty at all other times: That the pauper served his master as a sheerman during the term aforesaid according to agreement, working the same hours as his master's other sheermen did, and hath not acquired

Pauper is hired for five years as a sheerman, at increasing wages, and is to work only sheermens hours.

Settlement by Hiring, &c.

acquired any other settlement. Mr. *Dunning* and Mr. *Hotchkiss* contended, That the sessions had done right, for that there was a clear hiring for a year, being for no less than five years; and as to the defect of service, that being by the indulgence of the master could not make any difference, and was like the case of *St. Agnes*, where a man was to work as other tinners work; and if there is not evidence enough to prove a hiring and service, it ought to be sent back to the sessions to be restated, because evidence and not facts was stated: And that the master's refusal to be examined, imported strongly that the father's recollection was wrong. Mr. Serjeant *Burland contra*: In the case of *St. Agnes* there was no exception in the hiring, but there was a defect in the service only, and here is an exception in the original contract. Lord *Mansfield*: We must judge on the evidence stated, I can't infer any thing from the master's refusal to be examined, we must take it on the case stated; and the question is, Whether there is a hiring for a year? In cases in which the master dispenses with the service, or is dispensed with by the custom of the country, or by the nature of the service, there it is a hiring for a year. But here is a hiring of a labourer at certain hours at weekly wages, and is like the case of the *King* and *Macclesfield*. If there be no exception in the original hiring, and a mere indulgence of the servant by the master afterwards, that will not prevent a settlement; but here it is otherwise: I think the evidence is sufficiently stated, and it was the only evidence upon which the sessions proceeded to found their opinion, and it must be therefore taken to be fact, and not sent back again. Mr. *Dunning*: This intendment is against, and to defeat the order. Mr. *J. Aston*: Persons hired for a year must be always under the controul of the master *Sundays* and other times, the distinction taken between this and *St. Agnes* is very right, here is an exception in the very hiring. The order of sessions must be quashed. Mr. *J. Willes* and *Aspurst* of same opinion.

Service where no Contract appears.

544. *R. v. Weyhill, H. 33 G. 2. 2 Burr. S. C. 491.*
 It was stated upon the order of sessions, that about fifty years ago, the pauper being then about eight years of age, was taken into a gentleman's family out of charity, and boarded, lodged and clothed; but without any hiring or contract during the whole service, as to continuance,

Pauper was, 50 years before the order was made, taken into a gentleman's family out of charity.

ance, service, wages, or gratuity; that he received no wages, and was employed in running of errands, and doing whatever the servants or his master directed him; that in the pauper's apprehension, he was at any part of the time at liberty to quit the gentleman's house: Sessions were of opinion, that at this distance of time a regular hiring ought to be presumed. *Per Cur.* This is no hiring or contract; and it is stated to have been no contract: where there is a hiring stated, the court will presume it to be a regular one, unless the contrary appears; and that was the case of *Wincainton*, a general hiring was there stated; but here was no hiring at all.

545. *R. v. Inhabitants of St Peter's in Dorchester, M.* Agreement to work with a father-in-law, and to be paid a penny a gross for making buttons. 4 G. 3. 2 Burr. S. C. 512. *J. M.* a lad about sixteen years of age, agreed with his father-in-law to live in his house in the parish of the *Holy Trinity*, and to work at his trade, and to be paid a penny per gross for the buttons he should make (being the same wages the father-in-law paid his other workmen), and his father-in-law should deduct five shillings a-week for his meat, drink, washing and lodging: He served under this agreement four or five years. Lord Mansfield: This is not a hiring for a year either express or implied, it is a hiring of a workman to work by the piece: A hiring in general, and indefinitely gives a presumption of a hiring for a year, where the nature of the service and subsequent facts concur to render it probable that it was so: But the nature of this service is quite otherwise.

Service with a Relation.

546. Case of the parishes of *Jessop* and *Missenden, T.* A woman went to live with her father for 10 shillings a-year, in a cottage, and held to gain a settlement. 13 Ann. Fol. 152. *Mary Barnes* being settled at *Jessop* comes and lives with a father for a year, as a hired servant in a little cottage, upon the waste, in the parish of *Missenden*, for ten shillings a-year, and besides what she could get by her service and labour: The whole court was of opinion, that she gained a settlement in *Missenden* by this service, that there was no ground of fraud, for it was to live with her father who might be grown old.

547. Case of the parishes of *Gregory Stoke*, and *Pitminster, M.* 13 G. MSS. The pauper, who was a young girl, was sent to by a relation, who told her, that if she would live with

her, she should have meat, drink, &c. No settlement.

she would live with her she should have her meat, drink, &c. The girl accepted the terms, and lived with her four years as a servant: It was insisted, that the girl gained a settlement within the statute of labourers, 5 *Eliz.* c. 4. for that this general retainer made a good hiring within that statute, though not within the act of *W. 3.* That the living four years amounted to a good retainer for a year, and that this statute extends to all servants and apprentices, (see *Co. 2 Inst.*) that the actual entry into the service, after being sent to, and terms offered, is such an assent in the servant as amounts to a contract. But the court held, that there must be an actual contract or the servant is under no obligation to stay, and the contract must be mutual to bind the parties: This is no agreement; but an encouragement to the poor girl, that if she would live with a relation, she would maintain her: In *Salt*, 479. it was so held, that there was no contract of the servant, therefore he was not obliged to stay.

Hiring for a Year, and Service for a Year; but not pursuant, or subsequent to the Hiring for a Year.

For the Case of *Overton and Stevenson*, see *pl. 551.*

A. was hired for eleven months and at the end of that time was hired for a year, of which he served 31 months, and was held to gain a settlement.

548. Case of the parishes of *Britewell*, and *Westbally*, *H. 1 G. Fol. 154. J. 8.* is hired to serve from three weeks after *Michaelmas* 1712, to the *Michaelmas* following, and served accordingly, then was hired by the same master in the same place for a year, and served for eleven months. Motion was made, that the order should be quashed; for though there was a hiring and a service for a year, yet the service was not pursuant to the hiring. The Ch. J. said, by the statute of the 3 & 4 *W. & M.* a hiring for a year, and service for forty days was sufficient; but by the statute 8 & 9 *W. 3.* the service must be for a year; and here is a hiring for a year, and service for a year; so well enough. *Poor's Settlement*, 328.

A. was hired to serve from Christmas to Michaelmas, and served accordingly, and at Michaelmas was hired for a year,

549. *R. v. Aynhoe*, *M. 1 G. 2. MSS.* A parishioner of *Aynhoe* was hired into the parish of *Bicester* from Christmas to Michaelmas, and served accordingly, and at the said Michaelmas was hired again by the same master for a year, but served only till Midsummer following; the

the question now before the court was, whether these services gained a settlement at *Bicester*, under the 3 & 4 *W. & M.* and the 8 & 9 *W. c.* 30. s. 4. Mr. *Prime* argued, that the service must be one entire service, in pursuance of the hiring, by the statute of *W. 3.* by which it is directed, that no such person so hired for a year shall be adjudged to have a settlement, unless he abide in the same service during one whole year; whereas this man has continued but three quarters of a year in the same service, after the hiring for a year; but the statute requires one entire contract and one entire service, as was determined in the case of *Dunsford* and *Rudgewich*. Mr. *Lee* on the other part insisted, that the statutes do not require, that the service should be in pursuance of one entire contract or hiring; and that therefore, as there was in this case a hiring and continuance in the same service for a whole year, the words of the statute are fully satisfied. He mentioned the case of *South Sidenham* and *Lamerton*; in determining which he observed, that Mr. *J. Eyre* took notice, that an hiring for a year, and a service for a year, though the service was on different contracts, would gain a settlement, and that *Parker Ch. J.* said, that it was so, because the parish had the benefit of his labour so long, and for this further reason also, that by serving so long he had done what amounted to a notice in writing. Mr. *Lee* mentioned also the case of *Ivinghoe* and *Solebury*: But Lord *Ch. J.* See pl. 558. *Raymond* said, That seems to me a very extraordinary case, and must be understood in this manner, that the farmer lent his servant to the assignee, and that the contract still continued betwixt the farmer and the servant, so that the servant might have demanded all his wages of the farmer, notwithstanding the assignee had engaged to pay half, (and it was agreed, that this was the reason on which the court determined that case): And the *Ch. J.* proceeded to this effect: I do not see why the statutes are to be construed in the favour of settlements, when such construction may do a prejudice to other people, and no service to the pauper, who certainly is no vagrant, but has a settlement somewhere. By the statute there should be a hiring for a year before the service; but to support the present order, the service may be antecedent to the hiring. The case of *Britwell* and *Westbally*, *H. 1 G.* is certainly in point. That case was thus, *J. S.* is hired to serve from three weeks after *Michaelmas* 1712, to the *Michaelmas* 1713, which time he served, and just before the expiration of it, was hired

Settlement by Hiring, &c.

hired by the same master to serve in the same place for a year then next ensuing, and served accordingly eleven months; and it was held by the court in that case that, by the 3 & 4 *W. & M.* a hiring for a year, and a service for forty days sufficient, and although by 8 & 9 *W. 3.* the service must be for a year, yet there being a hiring for a year, and a service for a year, the statute was complied with. I am not well satisfied with this case, yet I do not see how we can get over it. Mr. J. *Page*: I think that the time for gaining a settlement ought to be accounted, and to commence from the time of hiring for a year; otherwise, if I hire a man by the week to work in my garden, and he lives with me 11 months upon these terms, and then I hire him for a year, and he lives with me another month he gains a settlement. Mr. J. *Reynolds*: The case of *Britwell, &c.* is exactly in point. The words of the statute are complied with, and though perhaps it is not exactly according to the meaning of the legislature, yet there is no material difference in the reason of the thing; for the intention of the 8 & 9 *W. 3.* was only to realize the contract; that it might not be in the power of any one to overload a parish with inhabitants, by contracting with a servant for a year, unless he was able to maintain him so long, and the servant able to work during the year. Mr. J. *Probyn*: One of the reasons in the determination of *Britwell, &c.* was, that this statute was an affirmation of the common law, for before the 13 and 14 *Car. 2.* a man was not removeable from the place where he inhabited, his residence determining his settlement; but that statute ascertains what space of time shall be sufficient to gain a settlement, and appoints forty days. Then the 4 *W. & M.* ordains notice in writing to make an inhabitation of forty days, a settlement, and enacts, that hiring for a year with such service shall be equivalent to notice, so that forty days residence in such service gains a settlement under that statute; and therefore the words "such service" in that statute, cannot be taken now to import a year's service in pursuance of, or subsequent to the contract. And the 8 & 9 *W. 3.* which was made to explain the other statute says only, "shall continue in the same service during the space of one whole year, but not the space of a whole year after the hiring." The court came into this opinion. And the order was quashed. *Ld. Raym. 1511. N. B. See R. v. Underbarrow, H. 6 G. 3. 2 Burr. S. C. 545.* Where the authority

authority of this case was acknowledged by the court; see likewise a very ingenious note of Mr. Burrow's at the end of that case, in which some doubts of Dr. Burn are cleared up, and it is made highly probable, that the case of *Overton* and that of *South-Moulton* are identically the same. Fol. 155.

550. *R. v. Fifehead*, M. 11 G. 2. Burr. S. C. 116.

W. T. hired himself to *R. H.* to serve from *Midsummer* to *Ladyday* at forty shillings for those three quarters of a year; at *Ladyday* he received his wages of forty shillings, and left his master's service, and then went to his father's house in the same parish before his master and he had any discourse about continuing in his service or making a new contract: after he had been with his father one hour, he was advised by him to return to his master, and try whether he could not agree with him for a year, which he did, and agreed for three pounds ten shillings a-year, and lived with his master half a year, when he was turned away, and accepted half a year's wages. Lord Ch. J. Lee: I see no reason why this should be looked upon as a discontinuance of the service: The servant was a little doubtful about a new contract, he went to consult his father, and in an hour's time returns and makes a new contract. The sameness of the contract has not been so much insisted upon, as to make it absolutely necessary that it should be under the very same bargain. The other Judges concurred, and Mr. Justice Chapple observed, that upon every new contract there is a sort of a discontinuance; that the last day of the former contract was the first day of the second service, and this was only an hour's absence, within the space of that same day; therefore he remained a servant during the whole time of the completion of this year.

551. *R. v. Underbarrow and Bradleyfield*, H. 6 G. 3.

2 Burr. S. C. 545. *Anne Kellet*, hired herself at *Christmas* 1763 to *John Thomson*, to serve him at *Croftwaite* and *Lythe* till *Whitsuntide* then next following, at one pound wages, which she received; at the same *Whitsuntide* she hired herself for one year to the said *John Thomson*, to serve him from that time till *Whitsuntide* 1765, (which is the usual course of hiring servants in *Westmorland*), she continued in her said master's service at *Croftwaite* and *Lythe*, under the said hirings from the beginning of *January* 1764, till the beginning of *March* 1765, and then quitted her service, being lame, and not able to serve any longer.

A person hires herself to serve from *Christmas* to *Whitsuntide*, and then hires herself for a year, from *Whitsuntide* to *Whitsuntide*, and serves under these hirings, 15 months, and gained a settlement. See *R. v. Newstead*.

longer. The sessions were of opinion, that she gained no settlement in *Crosthwaite* and *Lythe*. Mr. *Dunning* and Mr. *Wallace* in support of the order of sessions observed, that the case of *Overton* and *Stevenson*, 10 *W.* 3. See *Poors Sett.* 195. *Fort.* 316. 12 *Mod.* 224. was the first in which the court coupled a prior service with a subsequent hiring, and held the pauper to be settled in *Stevenson*, because she served above a year in all. That the case of *South-Moulton H.* 10 *W.* 3. was a like determination. See 1 *Ld. Raym.* 426. That in the case of *Aynhoe*, 12 *G.* 2. *Ld. Raym.* 1511. *Fol.* 155. The court held, that they were bound by precedents. But (as these gentlemen proceeded to observe) Dr. *Burn* (who presided at the sessions which made the order now in question) has in his last edition remarked, that these two foundation cases, that of *Overton*, and that of *South-Moulton*, were both of them antecedent in time to the statute 8 & 9 *W.* 3. which besides a hiring for a year requires a continuation in the same service for a year. That the service in the case of *Overton* expired in April 1696, and the sessions of parliament in which the statute 8 & 9 *W.* 3. c. 30. was made, did not begin till the 20th of October 1696. That before that act, a hiring for a year, and forty days subsequent service, were sufficient to have gained a settlement. In the *South-Moulton* case, the same thing will appear from computing the time. See Dr. *Burn's* tenth edition, page 317. The question, therefore is still open: The cases against the present determination of the sessions, particularly, that of the *King* and *Aynhoe* being founded on a mistake: Lord *Raymond* and Mr. *J. Page* in that case having declared, that if it were *res integra*, they should have determined that case otherwise, and it now appears, that the two supposed precedents, in conformity to which that case was determined, were no precedents at all, being prior to the statute 8 & 9 *W.* 3. Lord *Mansfield*: The authority of these cases will be just the same, whether the facts were prior to the statute or not; because the court determined them as upon facts subsequent to the statute. (See 1 *Ld. Raym.* 426.) Dr. *Burn* has great merit, He has done great service; and his opinion is supported by the arguments and observations which he has urged in support of it: But there are many determinations the other way; and upon the reason of the thing, the man's credit arising from his being hired for a year is as strong in one case as in the other: Therefore the determinations are better founded on reason than the objection to them is:

Besides

Besides they are in favour of settlements which is sufficient to turn the scale, if it hung quite even. For several reasons therefore we should not depart from these adjudged cases; but chiefly from the inconvenience of altering and overturning settled determinations. The foundation cases that have been objected to, are as good authorities as if the facts of them had been right; for it is the ground of these determinations, not the facts of them which were perhaps misapprehended, that gives them weight as precedents for future determinations. Mr. Justice *Wilmot* spoke with great regard of Dr. *Burn*, (as indeed all the world does, as Mr. *Burrow* justly observes), and added, that if it had been *res integra*, he might perhaps have been of the same opinion with the Doctor, or at least have doubted: But that it was a matter already settled. Mr. *J. Yates*, spoke to the same effect; otherwise he said he should have held as Dr. *Burn* did; for that by 8 & 9 *W. 3. c. 30.* It is required to be a continuance in the same service. Mr. *J. Aston* concurring, the order of sessions was quashed. N. B. Mr. *Burrow* in a note upon this case has reported the order of sessions, in the case of *Overton*, which order bears date on the 4th of *October*, 10 *W. 3.* (which was 1698,) and is in these words, *Bridget Bailly* before the 25th day of *March* 1697, was a settled inhabitant in the parish of *Overton*; and on or about the said 25th day of *March* the said *Bridget* contracted with one *J. O. of Steventon*, for the wages of twenty shillings, to serve him from the 25th day of *March* 1697, till *Michaelmas* then next following: Which time the said *Bridget* served accordingly. And at the said *Michaelmas* the same *Orpwood* contracted with the said *Bridget* from the said *Michaelmas* for one year ensuing, for the wages of thirty shillings, and the said *Bridget*, according to the last-mentioned contract, remained with the said *Orpwood*, till some time in the month of *April* 1698; in which month, by the mutual consent of the said *Bridget* and the said *Orpwood*, the said *Bridget* left the said *Orpwood's* service; and the said *Orpwood* paid to the said *Bridget* her proportion of wages then due. The other case of *South-Moulton*, Mr. *Burrow* has not been able to find upon the files of either the ninth or tenth year of King *William*, (see the second vol. of his Reports of S. C. 550.) from which, and some other circumstances, he suspects that it is the same case with that of *Overton*. N. B. It does not appear by any report of the case of *Britwell* and *Westbally*, which was in point, and prior to the case of *Aynhoe*, that the former

mer case was determined merely upon the authority of and in conformity to the determination of the case of *Overten*, but rather upon general reasoning upon the words and meaning of the statutes, and intention of the legislature. For which reason the case of *Britwell* and *Westbally* is generally, and not improperly considered as a foundation-case in this point. See pl. 548 and 9.

Same Service, but not in the same Place.

A. was hired for a year in Aston and served there half a year, and then removed with her master to another parish, and served the rest of the year there, and gained a settlement.

552. *Silverton* and *Aston*, T. 12 Anns, MSS. The pauper was hired for a year in the parish of *Aston*, where she served for half a year, and then the master and she removed to the parish of *Patsball* to another farm, where she continued the rest of the year. *Parker* Ch. J. Before the making of the 13 & 14 Car. 2. no person was removeable, nor by that statute after 40 days are expired. But by the 3 & 4 W. & M. such forty days are to be computed from a notice in writing, which must be published in the church. All this however extended only to such persons as were removeable. But a servant coming into a parish with his master is not removeable. The act 3 & 4 W. & M. goes on to make a farther provision, that any unmarried person, &c. being lawfully hired into any parish for a year, such service shall be adjudged a good settlement. As it stood upon this act there was a quere what was the meaning of the words "such service" whether such service should relate to the contract for a year or to the forty days. But the 8 & 9 W. 3. clears up that point, that the words "such service," were to relate to the contract, and to prevent persons running away from their service, but it cannot relate to the forty days. So that if a person is hired to a master in one parish and goes with him and serves him forty days in one, and goes with him into several others and serves forty days in each, and serves his master for one whole year, that parish in which he continues last for forty days before the end of the year shall be the place of his settlement. But if he runs away from his master during the space of that year, he gains no settlement at all. And the reason why the forty days residence gains a settlement is, because he comes there with his master, and you cannot remove him or her from his or her master, and therefore being once so far settled that they cannot be removed, that is accounted a settlement. It would be the hardest case imaginable upon servants who come to

London with their masters, and live one-half of the year in London, and the other half in the country, to be incapable of gaining any settlement at all, which can be done upon no other construction of the statutes. By the court the settlement is at *Paishall*. *Poor's Settlement* 23. *Fol.* 210. *Fort.* 308.

553. Case of the parishes of *St. Peter in Oxford* and *Chepping Wycomb*, *T. 8 G. Str.* 526. The master of the Oxford stage-coach hired a servant for a year, to stay in an inn in *Wycomb* where the coach usually baited, and to take care of the horses: He lived there for the whole year, and the master all the while lived in *Oxford*. And the whole court held that he gained a settlement in *Chepping Wycomb*, though his master never lived there. *Fort.* 318.

Service in A. while the master resides at B. See pl. 555.

554. *R. v. Inhabitants of St. Peter's in the East in Oxford*, *T. 8 G. 1. Foley* 215. *Mary Norris* was hired at *Christ-church* in *Oxford*, (an extraparochial place, on the 16th of *May* 1717 for one year, to *Mrs. Cooke*, who then lived, and ever since hath lived, with her son-in-law *Dr. Clavering*, canon of *Christ-church College* aforesaid, as a sojourner or boarder, and continued in her service there till the month of—in the same year, (when *Mrs. Cooke* went upon a visit to her son-in-law *Mr. Freeman*), in the parish of *Fawley*, where she continued three months upon the said visit. And her said servant was with her all the three months at *Mr. Freeman's*, at the end of which the mistress returned again to *Christ-church* aforesaid; where the said service expired.—This is the state of the case as transcribed by *Mr. Burrow* from the record, upon what occasion appears by the 2 vol. of his report of sessions cases 422. *Per Cur.* A person may gain a settlement by being in an extraparochial place. The settlement of a servant does not depend upon that of his master, if a master removes with his servants to various places in a year, the servant may be said to be hired in every one of those places, and the place where he lives with his master last forty days of the year, is his place of settlement.

Service with a boarder or sojourner gains a settlement. See pl. 557.

555. *R. v. Bishop's Hatfield*, *H. 1 G. 2. H. L.* was hired in *St. Alban's* by *Mr. Arnold* who had no settlement there, to serve, as his huntsman for one year. *Mr. Arnold* had a dog-kennel in *St. Peter's*, where *H. L.* was dieted and served the year. *Per Cur.* This is exactly the case of the servant employed on the road to look after stage-horses belonging to one who lived elsewhere, and yet

yet the settlement was adjudged to be where the service was. *Stra.* 794.

Service performed in a boat.

556. Case of the parishes of *Moleworth* and *Goring*. *E. 4 G. 2. Poors Sett.* 219. A poor man was hired by two partners of a boat at *Goring* for a year, to serve in the said boat, which plied between *London* and *Goring* for that year. *Per Cur.* This is not to be distinguished from the case of a man taken on board of a ship in which he serves during a year; and held in that case, that he gained no settlement.

The servant of a person who is occasionally at a place of public resort (as *Scarborough*) does not gain a settlement there.

557. *R. v. Alton*, *E. 30 G. 2. 2 Burr.* S. C. 418. *Richard Crockford* was born in *Elvetbam*, to which parish his father and mother came by a certificate from *Alton*, in the year 1722, before his birth. In the year 1734 he was hired for a year by *Sir H. Calthorpe*, and served that year out in *Elvetbam*; at the expiration of the year he was hired again by *Sir H. Calthorpe*, at *Elvetbam* for another year, and served it out; but the last forty days service of the second year was in the parish of *Scarborough*, in the county of *York*. *R. Crockford*, on the expiration of the said second year, applied to *Sir H. Calthorpe* to make a new agreement for another year, when *Sir H. Calthorpe* replied that it would be time enough when they returned home to *Elvetbam*. *Sir H. Calthorpe* returned about six weeks afterwards to *Elvetbam*, when he hired *Crockford* again for a third year at advanced wages, who served the year out in the parish of *Elvetbam*, and continued in the service of *Sir H. Calthorpe* for seven years more, in the parish of *Elvetbam*. The sessions held him settled at *Alton*, who gave the certificate under which the said *Crockford* was born. *Lord Mansfield*: This person was a certificate-man, hired by a gentleman in a parish where he lives and resides. His master goes to a place of public resort, not as an inhabitant, but as a sojourner, for his health or amusement. If this service for forty days at a place of public resort were to acquire a settlement there, it would be a great hardship both upon that place, and also upon *Elvetbam* which depended upon the certificate from *Alton*. It certainly was not the intent of the legislature, that if a servant should break a limb, or be waiting forty days at a sea-port for a passage, that he should be settled in such place. His master's place of abode, his domicil, can never be supposed to be in *Scarborough*. The case of *St. Peter's* in *Oxford* has been strongly urged to prove that the servant gained a settlement in *Scarborough*. This case has

has been stated by different reporters; but by none of them truly. But by comparing them together one may find what was probably the true state. Mrs. *Cooks* was mother-in-law to Doctor *Clavering* and also to Mr. *Freeman*, and lived sometimes with one and sometimes with the other, having no real place of abode, and was as much at home with Mr. *Freeman* as with Doctor *Clavering*, and therefore could not be considered as a person having a fixed abode at *Christ-church*, and being merely on a visit at Mr. *Freeman's*. There is a case in *Foley* 217. R. v. *Bishop's Hatfield*. Upon the face of which there arises a distinction. The servant was a huntsman, and nothing is more common than for gentlemen to have their huntsmen and hounds in places where they themselves do not generally reside. The huntsman perhaps never lived in the place of his master's general residence; and then this case becomes no more than that of the *Oxford stage-coach* man's servant. (1 *Str.* 528.) I lay great stress upon the circumstances of his having been originally taken by Sir *H. Calbarpe* when not capable of gaining a settlement in *Elvetnam* as a certificated person from *Alton*. That both the master and servant considered *Elvetnam* as their home, as also upon the precedent and subsequent service. We are all of opinion that the whole of the service was only a continuation of the service at *Elvetnam*, and both orders must be affirmed.

See pl. 554.

Service with different Masters under one Hiring.

558. R. v. *Ivinghoe*, B. 4 G. *Str.* 190. N. Y. was hired for a year into *Ivinghoe* by *John Knight*, to serve him as a shepherd, and served him till *Ladyday*, when his master paid him half a year's wages, and left the farm to S. who entered and took all the stock and servants, and in harvest-time took N. Y. from keeping sheep, and set him to harvest work, for which he paid him five shillings extraordinary, and at the end of the year paid him what wages were due. When *Knight* left the farm he did not tell N. Y. that he was no more his servant, nor were there any transactions between them towards dissolving the contract, nor did he make any contract with S. The Ch. J. observed, that half this service was actually a service to *Knight*, and the rest in fact to S. but there being no dissolution of the contract with *Knight*, nor any contract

A servant hired for a year serves half a year, when his master leaving the farm, he served the succeeding tenant the rest of the year.

Settlement by Hiring, &c.

contract at all with S. I think the whole may be considered as a service to Knight; as if I lend my servant to a neighbour for any time, and he goes, and does what work my neighbour sets him about, yet all this while he is in my service, and may reasonably be said to be doing my business. If the first contract is not discharged, the servant is intitled under it, to demand his wages of the first master, and the five shillings given by S. is only a gratuity for extraordinary trouble. Order confirmed.

Service till master dies, and completing the year with the executor gains a settlement.

559. *R. v. Laddock*, E. 15 G. 2. Burr. S. C. 179. The pauper was hired for a year, and served part of the year in *Laddock* till his master's death, and then his executor asked him, if he was willing to serve him (the executor) for the remainder of the said last-mentioned year according to the bargain made between the testator and the said pauper; which he agreed to, and served him in the parish of *St. Ender*, during the remainder of the year, and received the wages for which he had agreed with the testator. Lord Ch. J. *Le*: The present question depends upon 8 & 9 W. 3. c. 30. s. 4. Whether it be a continuance for a year in the same service: This case differs from that of an apprentice, where the settlement is gained by service under the indenture. But I can't distinguish this case from that of *Solebury* and *Ivinghoe*, where the servant lived with the assignee of the farm, and the court considered it as a continuance of the service under a hiring for a year. The contract in this case is continued by the executor. The act of parliament does not require the service to be the same as to the place or person, but only a continuance of the same service. The other Judges concurred, and held that the contract was not determined or dissolved by the death of the master, but that the servant was obliged to serve the executor, and the executor to pay him. Order quashed.

Absence of the Servant.

Service till within three weeks of the end of the year, and then parting by consent.

560. *R. v. Burnham*, M. 1 G. 1. Fol. 206. *Poor Sett.* 84. A. covenanted with R. A. to serve him for a year in the parish of *Burnham*, but went away three weeks before his year was out, by his own and his master's consent, and was abated six shillings of his year's wages for it. And this whole matter appearing to the justices at sessions, they being equal, the order was confirmed; but the order being removed by *certiorari*, by the whole court.

court the order was quashed, and resolved that *A.* gained no settlement in *Burnham*. *Per Cur.* Here is no manner of fraud expressed or appearing by a necessary implication. It is not within the words or the meaning of the act. Can a man compel his servant to gain a settlement *volens volens*; for whose advantage is it? The servant's or the master's? As to the covenant that it was by deed, and so the service continued, perhaps he might bring covenant; and as to that point the service continued; but not *quoad* a settlement, where the statute saith he must serve for a year; which is not in this case. See *R. v. Godalming*, *Burr. S. C.* 69.

561. *R. v. Iffip*, *E. 7 G.* The pauper was hired for a year in *Iffip*, during the year he was sick for six days, and incapable of doing any service, afterwards he went without leave to see his mother, and staid away four days; three days before his year was up he asked leave of his master to go to a statute fair to be hired, which he refused; but the servants insisting that he must go, the master replied, I am resolved you shall gain no settlement in this parish, therefore if you will go, it shall be for good and all, to which the servant answered no, he would serve out his year, and thereupon went (to the fair) and never returned during the last three days, and when he came to be paid, his master deducted for the time that he was sick, and when he went to see his mother, which the servant agreed to, and the master likewise abated sixpence for the last three days, which the servant refused to allow, but the master refusing to pay it, he took the rest of his wages. Lord Ch. J. Pratt delivered the resolution of the court, that a servant who lies under the visitation of the hand of God, which does not befall him through his own default, is and must be taken to be all the while in the service of his master; it was not the intent of the statute that if a servant stays out a night or two it should avoid the settlement; but here the master by taking him again has dispensed with his non-attendance; we are likewise of opinion, that the servant's request being reasonable, and the master's refusal unreasonable, the servant's going to the fair without leave is no forfeiture of his former service, especially taking in the servant's declaration at the time, that he would serve out the year, and his refusal to allow a deduction out of his wages, which shows that the contract was not dissolved before the end of the year.

Stran. 423.

The pauper was unable to work during six days, and was absent four days to see his mother with out leave, and went to a statute fair to let himself against his master's order, yet was held to gain a settlement.

Absence for three weeks in the middle of the year does not prevent a settlement.

562. *R. v. Eaton*, T. 8 & 9 G. 2. *Burr. S. C.* 47. *William Drackett* was hired by an inhabitant in *Eaton* for a year, from *Martinmas* to *Martinmas*; and about the middle of the term he absented himself without his master's consent for about three weeks together, and then upon the demand of his master he returned, and served out the remainder of his year. *Per Cur.*: This is a very good order: the absence of the servant for the three weeks being purged by the master's receiving him again; which ought to be considered in this case as a dispensation: And in strictness of law, he still continued in the service, notwithstanding such absence. And if we were to be over-nice in services upon this statute, (8 & 9 W. 3.) it would be attended with great inconveniences: For a servant would not be able to go for two or three days to see his friends, without running the risk of forfeiting his settlement.

Service till within ten days of the end of the year, no settlement. See pl. 360.

563. *R. v. Inhabitants of Castle-church*, M. 9 G. 2. *Burr. S. C.* 69. The pauper was hired for a year in *Castle-church*, and came to live with his master there on the 7th January 1733, and continued with him till the day after the *Christmas Day* following, and then went away by his master's consent, and took his clothes with him, and received his whole year's wages; the sessions held this a good hiring and service for a year. In support of the exception to this order the case of *R. v. Godalmin*, H. 12 G. was cited, in which it was determined that a servant who went away from his service by consent, and received his whole year's wages, gained no settlement; and also the case of *Burnham and Preston*. Lord *Hardwicke* Ch. J. The act of 8 & 9 W. 3. c. 30. is an explanatory law, and therefore according to the general rule is not to be extended by construction; for the legislature having thereby made a construction themselves of a former act, there would be no end of constructions if we were to make constructions upon constructions. It is a rule with regard to explanatory acts, not to carry equitable constructions too far, and beyond what the words will justify: now that act expressly requires a continuance in the service during one whole year. See *§. 4.* How then can we abate it? In the cases cited (*R. v. Ivinghoe*, *R. v. Frencham*, *R. v. Westhorpe*, *Horton* and *Haughton*) it appears that the contract was not determined. But in this case the facts are so stated, as that upon the whole the contract was determined, and the pauper ceased to be a servant to the master. If so he could not be said to continue in the service during the twelve days mentioned in the order, and

and consequently it was not a service for a whole year. The case of *Ipslip* is not an authority in the present point; because there was no determination of the contract. It being stated in the order that the master refused to give the servant leave to go to the statute, and that the servant declared he would serve out his year, and refused to allow for the last three days. And the reason given by Lord Ch. J. *Pratt* for the opinion in that case is a very good reason, and shews that the contract was not dissolved before the end of the year, and that the departure of the servant to seek out a new service, was not in the servant or a desertion of his service. Fraud infects every thing in these cases; but where there appears no fraud, we cannot intend it. If there be any fraud in this case, it seems to be in the master in paying the servant his wages even for his absence. Mr. J. *Lee*: This is a very clear case. It appears the servant went from his service before the year was out, and that the master consented to it: Which is a plain determination of the service within the year. No fraud appears in the case: The paying the wages for the time of the servant's absence might be an act of benevolence. In the case of *Ipslip* there was no determination of the service within the year. The other Judges concurring, both orders were quashed.

564. *R. v. Beccles*, 17 G. 2. 2 Stra. 1207. The pauper was hired for a year, and the wages of three pound for the year, to be paid to the servant when wanted by him. In the course of the year his master gave him leave to work with another smith for three days, with another for a week, and a third for a fortnight, and agreed that the pauper, should have the advantage of it. He returned and staid out the year, and his master by his consent deducted the proportion of wages for the time he was absent; the sessions held, that this was no settlement, the first contract being dissolved. *Per Cur.*: This is not a dissolution of the contract, but a licence to be absent, and both parties considered it so, by continuing together to the end of the year. The accelerating the payment of wages for the convenience of the servant, which is usually done without a particular agreement, makes no alteration. Order quashed.

565. *R. v. Goodnestone*. T. 19 G. 2. Burr. S. C. 251.
W. M. hired himself at 8*l.* wages for a year from *Michaelmas* 1731, about three weeks before the expiration of his year, he asked his master's leave to go to the *Herring* ring

Servant has leave given him to work with another master for his own advantage ; held that gained a settlement.

About three weeks before the expiration goes to the herring fishery with leave of his master, con-

continued there six weeks, and gained a settlement.

About three weeks before the end of the year the servant parts by consent, about a fortnight afterwards returned again to the service, and within a week after the expiration of the first year he was hired for a year, of which he served six months, and was holden not to gain a settlement.

ring Fishery, which his master granted him, upon condition that he should procure a man to do his work in the mean time. He procured a man for that purpose, and paid him, and then went to the *Fishery* and continued there six weeks. What he earned there was for his own benefit. His master paid him the whole 8*l.* for his year's wages. Lord Ch. J. *Lee*: I cannot distinguish this case from that of *Beccles*, in which the absence with the master's consent was not holden to vitiate or dissolve the contract. In this case it is not stated, that the contract was dissolved, and his master paid him his wages for the whole year. I am of opinion that it is a good settlement. The other Judges concurred, and Mr. J. *Foster* observed that as the master had the benefit of the contract during the whole year, so ought the servant to have it also.

566. *R. v. Caverswall, R.* 31 G. 2. 2 Burr. S. C. 461. *S. B.* was settled in *Caverswall*, and afterwards was hired for a year to *E. Brassington* of *Trentbam* at 5*l.* wages, and served him to within three weeks of the end of the year, when on some disputes arising between him and his master, he was with his own consent discharged from his service and received all his wages except what was deducted for the three weeks. As soon as he left this his service he went to *London*, and was absent about a fortnight: Upon his return, and at Mrs. *Brassington's* request (his master being then from home) he went again into their service, and within a week after the expiration of the first year, his said master hired him again for another year, and he served him in *Trentbam* for about five months of that second year, and then left him. Lord *Mansfield*: Determinations upon these poor laws ought to be according to the plain common sense, and with the least subtlety possible. Here was a chasm of a fortnight or three weeks, and the first contract was absolutely dissolved, and so continued for a fortnight or three weeks; therefore this last service cannot be connected with the former. Mr. Justice *Denison*: In the case of *Aynhoe*, and in that of *Britewell* and *Westbanning*, the court determined them upon the foot of the service continuing, whereas his service was totally at an end. Mr. J. *Foster*: In the case of *Fifehead* the court did not consider so small an interruption as an hour or thereabouts as a total dissolution of the contract; but here is a total dissolution of the contract, and the two services cannot be connected. Mr. J. *Willmot*: Here is both a dissolution of the contract and an end of the service; whereas in the cases cited the service continued. The case of *Fifehead* was only, as

Lord Ch. J. *Lee* expressed it, a hesitation of the boy for an hour. *Per Cur.* Order affirmed.

567. *R. v. Neiter Heyford*, E. 32 G. 2. 2 Burr. S. C.

479. The pauper was hired for a year, and served till within five weeks of the end of the year. When with his mistress's leave he parted with her, and went to work with a farmer in another parish, and staid those five weeks with him, and received ten shillings, which he voluntarily deducted out of his wages, when upon his return to his mistress she laid down his whole wages to him. If his said mistress had, during the five weeks, required him to return to her he should have so done.

Servant goes with the consent of his mistress, about five weeks before the end of his year, to work with a farmer in another parish, but held himself obliged to return upon demand, held to gain a settlement.

Lord *Mansfield* delivered the resolution of the court: We are all of opinion this was an absence with leave. He paid her the whole that he had earned in the five weeks that he was absent, that is, he voluntarily deducted it from the wages she laid down to him, considering himself as her servant during that time; for otherwise the deduction would be in proportion to his whole year's wages to the time of his absence; these five weeks service then was treated by them as a part of the service done to her. And he says, if she had called upon him he should have returned. He gains a settlement by this service. See *R. v. Froome Selwood*.

568. *R. v. Ross*, T. 11 G. 3. Order of removal of the pauper to the parish of *Ross* was confirmed at the sessions, and thereupon a special case was stated for the opinion of the court, as follows: That the pauper was born at the parish of *Ross*: That he hired himself for a year to *E. Miles*, and served him in the parish of *Langeran* only three days; a difference arising between them about the business the pauper was employed in, *Miles* bid the pauper go about his business, upon which he immediately went away and quitted the service, and hired himself to one *Whitley* for a year at 55s. a-year, and served *Whitley* for six months in *Whitchurch*: *Miles* then insisted upon *Whitley's* not keeping the pauper in his service, *Whitley* paid the pauper his wages till that time, and he quitted his service and went one or two voyages up the river *Wye*, as a labourer to a barge-master for a fortnight; then at *Whitley's* request and *Miles's* consent, he hired into *Whitley's* service without coming to any new agreement, or any mention of wages: The pauper continued in *Whitley's* service in *Whitchurch* seven months, being a month over the end of the year for which he was originally hired by *Whitley*, in order

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to make up his lost time, and then received his wages, his master deducting 7s. 6d. for breaking a plough. The court of sessions being of opinion that the contract for a year with *Whitley* was dissolved by mutual consent, at the expiration of six months, they confirmed the order of removal to *Ross*. In shewing cause against quashing the order of sessions it was contended, that the Justices had decided the question by determining and stating, that the contract with *Whitley* was at an end, and dissolved at the end of six months; and that if they had not so stated it, yet the facts warrant that conclusion, for the relation between master and servant was at an end, and that the master could not have punished the pauper for deserting his service: They relied on the cases of the *King* and *Caversal*, *Ilfeld* and *Wistover*. On the other side it was said, That this case differs from that of *Caversal*; there the man went away for almost six months, and then made a new contract; but the pauper in this case was absent but a fortnight and made no new contract; there was no continuance of the relation; here was. It is true that the Justices have stated that the contract was dissolved; but they have stated that the pauper returned into the service without any new agreement; so that it appears they have drawn a wrong conclusion, and if that appears the court is not bound by their drawing a wrong conclusion: That it is necessary that the year's service should be under the same hiring, but here he must have served under the first contract, or under no contract at all. Lord *Mansfield*: This is a mighty clear case; the service must be connected with the hiring. This is not like a man running away, and the master taking him again, for there his offence is purged, and in that case the hiring is not at an end, here it is by the consent of both parties. Mr. J. *Aston*: This is not like any of the cases which have been cited, for here the pauper was quite free, and might have hired himself to any other. Mr. J. *Willes* and J. *Ashurst* of the same opinion. Rule discharged.

Service continued beyond the Year.

569. *R. v. Crocombe*, M. 19 G. 2. Burr. S. C. 256. J. G. The pauper, who was born at *Crocombe*, being about fifteen years of age, hired himself to live with Doctor *Lucy* as a servant for a year, and accordingly lived

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with him in the liberty of *St. Andrew* during that year, and had his wages and livery; and without coming to any new agreement, continued with his master in the liberty of *St. Andrew*, about a quarter of a year longer. Then the master took a house of above ten pounds a year, in the parish of *St. Cuthbert*, the *In-parish Wells*; and with his family (the pauper being one) removed out of the said liberty into the house aforesaid, where the pauper continued to live with Doctor *Lucy*, about six months, still under the first contract, and was paid the same wages in proportion to the time. The sessions were of opinion, that the settlement of the pauper was in the liberty of *St. Andrew*. In support of the order of sessions it was urged, That the first contract was completed and executed on both sides, and was determined: That it had gained the servant a settlement in *St. Andrew's*: That there was no new contract or agreement at all: That this was not the same service as that of the first year was; and that nothing was stated that could destroy the settlement gained in *St. Andrew's*, by serving a whole year there. The whole court were unanimous, that as there was an hiring for a year, and service for a year; and a continuance under the same service, it was sufficient to gain a settlement; and that such a settlement must be in the parish where it was performed for the last forty days. Lord Ch. J. *Lee* observed, That the 13 *Car. 2. c. 12* authorizes the Justices (upon complaint made by the churchwardens, &c.) within forty days to remove to that parish which was the pauper's last place of settlement for forty days, as a native, householder, sojourner, apprentice, or servant (for then service for forty days gained a settlement). Then the third and fourth *W. & M. c. 11. s. 7* enacted, that if any unmarried person not having child or children, shall be lawfully hired into any town or parish for one year, &c. such service shall gain a settlement. But this statute was doubtful upon the service. It being that such a service should gain a settlement, although no notice in writing should be delivered and published as that act required. The 8 & 9 *W. 3. c. 30. s. 1* explains therefore this act, by requiring that it shall not only be a hiring for a year, but also a service for a year, and a continuance in the same service during a year. Then two considerations of a settlement gained in this way are the benefit to the parish, and the labour of the person. He has destroyed the settlement gained in *St. Andrew's*, and gained a new one by what he has done since. For it is certainly the same service; and the last forty days of it

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make the settlement: And by gaining a latter settlement he of course loses his former. His Lordship said that he could not distinguish it from the cases cited, (*Silverton and Aston, R. v. Ladock*) of a hiring for a year, and a service for a year; which is holden to gain a settlement, though the service be not under the same hiring, and that he thought it quite indifferent in what parish the service was, provided it was the same service. The other Judges concurring, the order of sessions was quashed. *Str. 1240.*

Servants falling Sick during the Service.

570. R. v. Hardingham, M. 1 G. 2. An inhabitant of B. hired a maid-servant for a year, but she falling sick some time after entering upon his service, he turned her out of his service without giving her any thing. The servant through necessity in travelling from B. to *Hardingham*, where her friends lived, and where she was born, was forced to beg for her relief; upon which she was sent to H. as a vagrant, from thence she was sent back to B. which town procured an order of sessions to settle *H. R. Ch. J.* said, That here seems fraudulency in the master, to make his servant a vagrant, that so he may be rid of her; but if one begs drink and meat for necessity in passing from one town to another, this is not begging to make one a vagrant within the statute. (But see *10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*) Therefore the court ordered, that she should be settled at B. If cause were not shewn to the contrary. *Stiles 168.*

571. R. v. Inhabitants of Christ-church, E. 33 G. 2. 2. Burr. 1 S. C. 494. Wilz. Maxy the pauper was hired in the parish of *Christ-church* for a year, and continued to serve till she was frightened into fits, and thereby rendered incapable of doing any service, which was about seventeen days before the year was up. Her master being asked, ill; and distressed by her fits, her mistress desired the sister of the said *E. Maxy* to take the said *E. Maxy* to one Mr. *Lemoniers*, in the parish of *St. Adam-tham Bathmill Green*, where the sister then lived as a servant, and to request Mrs. *Lemonier* to receive her into her house, that she might be under the care of her said sister. But if Mrs. *L.* refused to admit her, she was then to bring the said *E. M.* back again to her said master's house. Mrs. *L.* received her, and after five days sent her to the hospital. The day after the said *E. M.*

Servant being taken ill is sent to lodge in another parish for a few days, and then is sent to the hospital, and continued absent and unable to serve till after the year from the hiring was expired, and held to gain a settlement. The master is bound to provide for the servant in sickness, and cannot deduct wages in proportion.

had been received to Mr. *Lemonier's* house, she returned to her master's to fetch away her clothes, and her mistress gave her two shillings, which made up her full year's wages. No words of discharge passed between the pauper and her mistress; but she looked upon herself as then discharged from her service, believed, that if she had recovered her health, her master would have received her again; but she continued under the same indisposition, till after the year from the said hiring was expired: And ten days after she went to Mr. *Lemonier's*, being seven days before the expiration of a year from the said hiring, her master hired another servant in her place, and she herself never returned to her said master's service. Lord *Mansfield*: If a master gives his servant leave to go upon any other service, or to be absent for a short time, and pays him his whole wages, this is a fair *bona fide* service. Here the master being ill at home requested another person to take in his servant, she is sent to the hospital with his consent: The master and mistress paid her whole wages, and were satisfied with what was done: If the servant is taken ill by the visitation of God, it is a circumstance incident to humanity, and is implied in all contracts. The master is bound to provide for his servant in sickness, and cannot deduct wages in proportion to the duration of such indisposition. I see no difference between such sickness happening in the middle or end of the year. Mr. *J. Denison* agreed with his Lordship, and said, That "continuing and abiding in the service, means not deserting it." Mr. *J. Wilmot*: The distinction between the servant's absence in the middle or end of the year, turns upon this, that the absence in the middle of the year is purged by the master's receiving him again, which is not the case of an absence at the end of the year when he does not: But with regard to the act of God, illness, that distinction has no place: I do not agree to the position, that a servant has no benefit by gaining a settlement in a parish. It is not indifferent to a servant (very often) in what parish he gains a settlement, it is in many cases an advantage in fact, and has, and ought to be looked upon as such: It is reward for their labour and service. Is gaining a settlement indifferent to a foreigner who has no settlement of his own?

572. *R. v. Maddington, M. 11 G. 3.* Motion to quash an order of sessions, quashing one of Justices, removing *Robert Carter* to the parish of *Wilsford and Lake*. The case stated that the pauper was settled at *Madding-*

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ton: That about eight years ago he was hired about there weeks before *Michaelmas* to *Richard Chandler* of *Wileford Lake*, to serve him as a carter for a year from *Michaelmas* then next. About three days after *Michaelmas* he entered into the service with *Chandler*, and continued in the same until about three weeks before *Michaelmas*, when having been kicked by a horse of his master's, he went home to his friends at *Shreetown* five miles distant, without his master's knowledge or asking leave, to cure his leg, and continued there the remainder of the year, and never returned to his master except for his wages: Some short time after *Michaelmas* he was paid the whole except six shillings, which his master deducted on account of said absence, which pauper consented to. *Mr. Dunning*: I am to contend that the sessions have determined properly. Three weeks absence at the end of the year will prevent a settlement, unless it be accounted for. The case of *Stasford* and *Castlechurch* is a much stronger case than the present; for there he went away with leave, and yet it was held no settlement; but in the present case he went away without leave. If the kick the man received was a sufficient reason for his going to get advice, yet it does not appear that he was not able to return again the same day: It is not stated that he was incapable of doing his master some service, although not so much as before he received the hurt; nor is it stated that he was ill during the whole of the absence, and no intendment can be made to prove that he was not able during the whole absence; for that intendment would be to destroy the order of sessions, whereas every intendment ought to be made to support it. *Mr. Serjeant Burland & contra*, This case shews that the pauper did not quit the service without a reason, but it was for the cure of his leg, which puts a negative upon the idea of his deserting the service, as he went away to have his leg cured, it is not to be presumed as he did not return during the remainder of his time, that his leg continued bad; and if that be so, the continuance of the sickness is to be considered as a continuance of the service. Here *Mr. J. Aston* stopped him. I think there is a reasonable ground to say, that the sickness continued during the absence, and if so, there are many cases that prove a sickness to be a sufficient excuse for absence. For to prevent a settlement the servant must run away, desert the service, as *Mr. J. Denison* I well remember laid it down. *Mr. J. Willis*: I am of the same opinion with my brothers, but the only doubt I had in the case was,
Whether

Whether the sickness is stated to have continued during the whole time of absence? which I rather think it is. Mr. J. Ashurst: I think we must presume that the sickness was the only cause of the absence, for no other cause is suggested, and therefore the sessions order must be quashed.

Hiring and Service or Discharge, fraudulent or evasive of the Law.

573. *R. v. Haughton, T. 3 G. 2. fol. 146.* The special order states, that *John Evans* the pauper, about five years ago was hired by *R. T. of Haughton*, from *As/Wednesday* till *Christmas*, and served him that time; then he went away, and staid a week with his father who lived at *Ranton*; then he returned to the said *R. T.* and was again hired by him for eleven months, and served him eleven months; then departed, took his clothes with him, and was absent one week; then returned to the said *R. T.* and was hired for, and served him eleven months; then left that service, and went and staid with his father a week at *Ranton*. Then the pauper served one *Sutton* of the said parish of *Haughton* for about three weeks, then returned to *Ranton*, and staid for about a week, and then returned to the said *Sutton*, and hired himself for eleven months, and served in *Haughton* till within a fortnight or three weeks of eleven months, when by agreement with *Sutton*, to avoid a settlement in the said parish of *Haughton*, he left him, took his clothes, and went into the parish of *Gnosall*, and there continued a week. Then the pauper returned to *Sutton*, and continued with him so long as to make up his service of the last eleven months; and three weeks before *Christmas*, the pauper hired himself again to *Sutton* for another eleven months, and continued to serve him till the *Michaelmas* following, when he went away and married *Parker*. Ch. J. This is an apparent fraud. *Procto* J. I doubt we must take the law to be, that there must be a hiring for a year, and a service for a year; here the sessions have found it specially, and there is neither hiring nor service for a year. Suppose, that a man who lives in a parish encumbered with poor, hires a servant for eleven months only on purpose to prevent his gaining a settlement; And as to the fraud, the Justices of Peace are proper judges of that circumstance. It will be dangerous

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therefore stronger than that of *Lidney*, or that of *New Windsor* for; in the former, the first hiring was but for a quarter of a year, and in the *New Windsor* case the first hiring was but for a month. But in both it was collectively upon the whole of the circumstances taken to amount to a hiring for a year. Yet they were both to be conditionally void as well as the present. The other Judges concurring, the order was quashed.

577. *R. v. Milwich*, T. 30 G. 2. 2 Burr. S. C. 433. Hiring for eleven months, and to give in a twelfth, judged to be a fraud.
A. was hired in *Milwich* to B. for eleven months for four pounds ten shillings, and agreed to give him a month's service beyond the eleven months, and served accordingly, unless the three last days of the given-in month may be excepted, with regard to which, A. was not certain whether he had served them or not; but he received the whole four pounds ten shillings. *Per Cur.* Notwithstanding the attempt to prevent the man's gaining a settlement by a paltry evasion, this is a manifest contract to serve for a year. The real question is no more than whether eleven months and one month make twelve months: There are no particular technical terms necessary to make a hiring for a year. The substance of this agreement, without attending the variation of expression, is to serve twelve months for four pounds ten shillings. Every contract to serve is a contract to serve for a year, unless there be something to explain it otherwise, which certainly is not the case here. Mr. J. Foster, that an action for the wages would not have lain till the end of the twelve months. The order was affirmed.

578. *R. v. Frome Selwood*, T. 6 G. 3. Burr. S. C. 565. Ten days before the expiration of the year, the pauper told his master, that he desired not to gain a settlement under that service, and with his master's consent went to see his relations, which consent was held to be fraudulent.
R. S. was hired for a year in *King's Weston*, at the wages of five pounds; and under this contract he served at *King's Weston*, till within ten days of the end of the year, when the said R. S. declaring to his master, "that he wished not to be settled at *King's Weston*," asked his leave to go and visit his relations; to which the master consented. After the year was expired, R. S. returned to his master, and then hired himself as a day-labourer, and as such continued with him for about three months. Some time after his return, his master and he made up their accounts, allowing for the days he had been absent the preceding year out of his daily wages. On appeal to the sessions, the first sessions took it up, and stated the preceding case, and confirmed the order of Justices, subject to the opinion of the court of *King's Bench*, on the case so stated. After which they respited the appeal.

peal. The subsequent sessions taking up the appeal, and reciting, that it had been respited at the preceding sessions, and upon the facts and circumstances then admitted on both sides, absolutely discharged and vacated the order of the two Justices. Exception was now taken to the order of sessions, that the hiring and service was dissolved by the agreement entered into between the master and the servant "to finish the service before the year should be up." But the court held the said R.'s settlement, upon the state of this case, to be in King's *Weston*, looking upon the leave and consent of the master as fraudulent, and a mere evasion of the settlement; and therefore the order of sessions was affirmed.

579. *R. v. Potter Heigham*, T. 11 G. 3. Special case stated for the opinion of the court: That the pauper having gained a settlement at *Potter Heigham*, was hired for a year from *Michaelmas* 1764, to *Michaelmas* 1765, by *Samuel Thaxter* of *South Walsham*: That such service he the said pauper entered on, and continued therein until the day before the end of the year, when he desired his master to discharge him, telling him, as he had let himself for the next year to a person in a distant place, and was removing farther from his friends, the pauper wished to go and see them, and pass that day with them, and requested to have that time to himself to spend with them; to which the master consented, and he was accordingly discharged, and then received the whole of his wages, save sixpence, which he allowed to his master for that day. That the said pauper was hired for a year to *Mrs. Nathall* in *Cayster*, from *Michaelmas* 1755, to *Michaelmas* 1766, at six guineas wages: That he entered on his service at *Michaelmas* 1765, and continued there until a few days before *Ladyday* following: That he had then received one guinea in part of his wages; when without his mistress's leave he absented himself from her service for about three weeks, and then returned and offered to serve out the year with his said mistress; but *Mr. Nathall* who acted as agent for *Mrs. Nathall*, as also *Mrs. Nathall* herself refused to take the said pauper again, unless he would make a new agreement and a new hiring; and accordingly it was agreed between them that he should serve from that time to the *Michaelmas* following, and should receive three guineas and a half for that service: He accordingly served her until *Michaelmas*, and received such wages of three guineas and a half: That the pauper was hired for a year, from *Michaelmas* 1766 to *Michaelmas* 1767, by *Mr. Shreeves* of *Hardley*: That he

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he accordingly entered upon and continued in his service until within three days of the end of the year, when the pauper being unwilling to gain a settlement in *Hardley*, requested his master to discharge him, which he accordingly did, and they parted by consent, the pauper allowing one shilling of his wages for the three days. The sessions were of opinion that pauper's settlement was in *Potter Heigham*, and that he had not gained a subsequent settlement by such hiring and service as aforesaid. Mr. *Dunning* moved to quash the order of sessions, upon the ground of the settlement being gained by the hiring and service at *South Walsham*, saying, That there were other grounds sufficient for the reversal of the sessions order, by the settlement after stated; but that it was immaterial for him to go into them, or to argue even the first point, the bare reading of it being sufficient for his purpose. Lord *Mansfield* being absent, Mr. *J. Aston* and the other Judges called on Mr. *Wallace* to support the opinion of the sessions; who contended that there was a clear dissolution of the contract, and therefore it was not like the case of *Issip*: That here the servant desired to be discharged, and the master discharged him accordingly: That the agreement was a day before the end of the year: That the contract should be dissolved. Mr. *J. Aston*: There is nothing in it; the servant went away with the consent of the master. Mr. *J. Willes* and Mr. *J. Ashurst* being of the same opinion, the order was quashed.

C H A P. XIV.

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SEE case of *St. Giles's and Eversley Blackwater*, and that of *Aythorp Roding and White Roding*.

580. *R. v. Ratcliffe Culy*, *M. 2 G. Str. 211*. Upon an order for removal of a widow and her two children from *Exall* to *Ratcliffe Culy*, it appeared, that one *F. S.* was hired and served for a year in the parish of *R. C.* and gained no other settlement before his death; therefore the Justices adjudge the wife and her children to be settled in *R. C.* and sent them thither. As to the settlement of the husband, exception was taken to this, that a married man gains no settlement by his service, and that the children are called her children, not his. *Per Cur.*

Court will not intend, that the husband was married before he was hired.

We

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We never make intendments to destroy an order, it does not appear, that he was married at the time of the hiring, and if he was married during the service, that will not prevent his settlement. As to the children we must intend them to be his by her, till the contrary appears; and that they are so is averred by implication, in the adjudging the children being settled with him, for that they could not be, if they were her children by a former husband; we must therefore take them to be his. Order confirmed.

Removal of the wife without the husband.

581. *R. v. The parish of St. Michael, H. 9 G. Str. 544.* Order recited, that the wife of a poor person who is now living, had intruded, and was likely to become chargeable, and that the place of her settlement was in the parish of *St. Michael*, and therefore removed her thither. Exception was taken on this order, that it did not appear that the husband was at the time of the removal in the parish of *St. Michael*, so that it may be they have sent the wife away from the husband. *Per Cur.* We cannot intend that he was not; if he was indeed in the parish from which he was sent, that indeed would vitiate the order; but as neither of these facts appear against the order to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed.

Overseers indicted for bribing a man to marry a poor woman of their own parish.

582. *R. v. Edwards, M. 11 G. 8. Mod. 321.* Overseers were indicted for a conspiracy in giving a small sum of money to a poor man of another parish for marrying a poor lame woman of their own parish. The court held this to be an indictable offence; but this indictment was quashed for want of an averment, that the woman was last legally settled in the parish relieved by her marriage.

583. *R. v. Aylebury, M. 11 G. 2. MSS.* Information granted against overseers for bribing an old man of another parish to marry a young girl that was senseless, in order to charge the parish.

Removal of wife and children without the husband.

584. *R. v. Ironacton, M. 14 G. 2. Burr. S. C. 153.* Upon complaint, that *Mary* the wife of *W. K.* and eight of their children, (naming them) had intruded into *Painswick, &c.* Two Justices removed them from thence to *Ironacton*, which they judged to be the last legal settlement of the husband: And upon appeal the sessions confirmed the order. A motion was made to quash these orders, upon this objection, that the wife and children are removed without the husband, and that this amounts to a divorce between the man and his wife. But the court over-ruled the objection, and asked, how it appeared

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peared that the husband was not at *Ironacton* at that time; We cannot suppose it to be wrong, unless it appears so: The supposition is rather, that he is at the place where he is adjudged to be settled. The intrusion complained of is only of the wife and children; How could the Justices remove the husband when he was not complained of? The order is right.

585. *R. v. Higber Walton, H. 14 G. 2. Burr. S. C.* Where a married woman's settlement is adjudged, the court will not intend it to be one in her own right, but that of her husband.

162. Two Justices remove *Mary Bennet*, the wife of *Samuel Bennet*, and daughter to *H. W.* which they adjudge to be their last legal settlement: It was objected, that it does not appear, whether it was this woman's settlement in her own right, or in the right of her husband; if it was not her settlement in the right of her husband, the Justices had no power to send her there, and nothing shall be intended. The child's age also ought to have been set out. *Per Cur.* It is adjudged to be her legal settlement; she could not be settled at any other place than where her husband was settled. We are not to intend any thing to vitiate the order; therefore cannot intend, that the husband's settlement was not at *H. W.* as they expressly adjudge the daughter to be settled there, her age need not be specified.

586. *Berkswell v. Balfall, 15 G. 2. Vin. Abr. Rem. 467.* Order to remove *A.* and his wife were removed by an order of two Justices, from the parish of *C.* to *D.* and the order was not appealed from, to the next quarter sessions. Afterwards it appearing, that *B.* was never married to *A.* she was removed back to *C.* by another order of two Justices, which was confirmed at the sessions. Now the court was clear, that the two last orders were bad, and that the first order confirmed at the sessions, whether upon appeal or for want of an appeal, must be conclusive to the contending parishes, upon the authority of the case of *R. v. Northbrey, T. 5 & 6 G. 2.* in which the court determined, that a man, his wife and family being removed, if the children afterwards appear to be bastards, they cannot be sent back to the former parish. *Ibid. Burr. S. C. 168.*

587. *R. v. Inhabitants of Luffington, E. 17 G. 2. Burr. S. C. 232.* About eighteen years since, one *William Hellyar* was married to *Mary Hembury* of *Curry Rivel* in *Somersetshire* spinster, at the city of *Bath*, by a person in a black coat and band, whom the said *Mary Hembury* apprehended to be a clergyman; but has since been informed that he was a layman: That the matrimonial ceremony of the church of *England* was duly read

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read over, and a ring was properly made use of, and the same was performed in a private room in a dwelling house, and not in a church or chapel: That in pursuance of such marriage, the said *William Hellyar* and *Mary* cohabited as man and wife for the space of nine or ten years, but have not lived together since: That on or about the tenth of *June 1742*, the said *William Hellyar* was regularly married to the said pauper *Eleanor*, in the parish church of *Symondsbury*, by a clergyman in holy orders, according to the form of the church of *England*, during the life of the said *Mary*, by a licence obtained by the said *Hellyar* for that purpose; and the sessions thereupon confirmed the original order. On *Wednesday* the first of *February* last, a motion was made by *Mr. Gundry* to quash these orders; and a rule was made to shew cause. First objection. It does not appear by the original order, nor by the order of sessions, that *William Hellyar's* settlement was at *Luffington*; which ought to appear in order to make the removal of *Eleanor* thither, in the character of his wife to be good. Second objection. His marriage with *Mary Hambury* was a good marriage, consequently that to the pauper was null. *Mr. Henley* and *Mr. Gould* now shewed cause: As to the first exception, it is adjudged by the two Justices, that *Eleanor's* last legal settlement was in *Luffington*, and the sessions have not quashed this order, therefore it stands, and it must be good as her original settlement; which it might be originally and independently of *William Hellyar's* settlement. The order of the two Justices does not speak of her as a married woman, but absolutely so, that this exception will not affect the order. As to the second exception: A marriage, in order to have a temporal effect, must be according to the ceremonies of the church of *England*: The case of *Hayden v. Gould*, in 1 *Salk.* 120 is an express determination, "That a marriage celebrated by a person not in orders, is ineffectual and void, and this even in the case of a marriage between two dissenters; for that marriage which was by a layman did not intitle to administration." I do not comprehend the force of the distinction made in that case, relating to the wife and children: "That perhaps they might intitle themselves by such marriage to a temporal right, though the husband could not." Besides, that determination itself in *Salk.* there is a case in *Swinburn* cited, where such a marriage was ruled void, and the manner and form of pleading is specified; which both shew the contrary to

to that distinction. Lord Ch. J. *Lee* held the second point to be of great consequence, and to require great consideration; but he thought the case very imperfectly stated. As to the person in a black coat and band, &c. it is only evidence of the circumstances of the first marriage: Whereas the sessions should have determined whether the marriage was by a clergyman in holy orders or not, but this they have not done. Mr. J. *Chaple* too held the state of the case to be imperfect; therefore for the imperfection of the state of the case, both orders were quashed. Mr. J. *Wright* and Mr. J. *Denison* were silent. Mr. *Henley* hinted at the sending the order down again to the sessions, to have the case more completely stated; but *Lee* Ch. J. said, both orders must be quashed. *N. B.* They certainly were not quashed on the merits: And no particular reason was given why they were quashed at all, it does not appear to me Why the court did not refer the case back to the sessions to be more fully stated, as has been done in numberless other instances.

588. *R. v. Preston, M. 33 G. 2. 2 Burr. S. C. 486.* Infant married by licence without the consent of his parents. An infant under age was married by licence without the consent of his parents, contrary to the statute 26 G. 2. c. 33. and two Justices removed him, his supposed wife and child to *Preston*, the place of his settlement; and their order is confirmed at the sessions. Lord *Mansfield*: There is a distinction to be made between acts of parliament made against one of the parties, and for the benefit of another of the parties, (and where such other party has an election, either to take benefit of it or not), and acts of parliament made against both. This is an act made against both, and the marriage is therefore absolutely null and void to all intents and purposes whatsoever. It is not like the cases on the statute of *Bigamy*, 17. 1. which was made only against one of the parties. The other Judges concurred with his Lordship; and they also observed, that this act was made against both, to which Mr. J. *Foster* added, and against the innocent children of both. The orders were quashed as to the woman and child.

589. *R. v. Stockland, T. 2 G. 3. Burr. S. C. 508.* Thirty years cohabitation seems to be sufficient ground for an order of removal. *John Moes* and *Elizabeth Mason* went together from *Chardland*, declaring they were going to be married, and soon returned, and declared they had been married, and they cohabited together for about thirty years as man and wife till *Elizabeth's* death; and had a son the pauper,

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in the year 1725, who was baptised and registered as the son of *John* and *Eliz. Moes*; they after the son's birth resided many years at *Stockland*. The sessions refused to admit *John Moes* to give evidence, that he was never married to the said *Eliz.* or that if he were, she had a former husband then living. Mr. *Glynn* now objected, that the sessions ought to have heard this evidence, and cited a case between *St. Peter's* and *Old Swinsford*. But Lord *Mansfield* seemed to think thirty years cohabitation as man and wife, was a sufficient proof to the Justices to found an order of removal upon. However a rule was made to shew cause, but on the last day of term Mr. *Glynn* gave up his objection; and by consent the order was affirmed.

It is not incumbent on the persons married to prove the publication of the banns, and the want of a proper entry of the marriage does not invalidate it.

590. *R. v. Inhabitants of St. Devereux, E. 2 G. 3. 2 Burr. S. C. 506.* It was proved by the oath of one witness, that he and another person were present when *J. Meredith* and *S. Jenkins* were married by banns, and a proper entry made of it in the register of the parish; but neither the parties, the minister or witnesses signed the entry, as directed by the 26 G. 2. c. 33, s. 14 & 15.— And no other appeared to have been made. *Per Cur.* It is not incumbent upon the persons married to prove, that the banns were published. The want of signing the entry does not invalidate the marriage; but there ought to be an information against the minister for omitting it.

If an order of removal to A. of a man and his wife, is not appealed against by the inhabitants of A. they shall not afterwards be permitted to give evidence, that the paupers were not man and wife.

591. *R. v. Enborn, H. 6 G. 3. Burr. S. C. 551.* Two Justices make an order to remove *George Wise* and his wife, from *Newbery* to *Enborn*, and their order was not appealed against: Afterwards, the parish of *Enborn* finding that *Jane* was not the wife of *George Wise*, two Justices remove her by the name of *Jane Moor*, singlewoman, from *Enborn* to *Silchester*. Upon appeal it was proved, that the said *Jane* was never married to the said *George Wise*: And therefore the sessions affirmed this order of the Justices. By the court: The sessions order must be quashed. Whatever the hardship may be in this particular case, or how doubtful soever this question might be, if it was *res integra*; yet its being fully settled, is a reason for us not depart from it now; *stare decisis* was always a good rule, and never more so than in cases of settlement of paupers, where it would make the utmost confusion, if we should overturn settled determinations, which the Justices all over *England* have been used to look upon as the rules of their conduct in similar cases. If she was not his wife, it might have been controverted.

troverted. But as they have neglected to appeal, when they had got a proper opportunity to shew it, they are estopped to say so now.

592. *R. v. Tarrant*, *M. 7. G. 3.* The defendant was overseer of the poor, and the only wealthy man in the parish. He gave three pounds to a poor man of another parish to marry a poor woman of the parish of which he was overseer. Rule was granted to shew cause why an information should not go against him for a misdemeanor. Defendant on shewing cause admitted the facts; but said, that the man and woman had long before intended to marry, and that nothing prevented them from carrying their intention into execution, but the want of a little money to begin housekeeping, which he out of charity gave them. The case of *R. v. Edwards*, *Str. 707.* was urged in behalf of defendant. But upon three cases being cited in point, *Rex v. Market Harborough*, *R. v. Saul*, and *R. v. Perrot*, The court expressing some indignation at the conduct of the defendant, and declaring, that they had no doubt of his guilt from his own account, unanimously made the rule absolute. See *Salk. 174.*

An overseer of A. gave 3l. to a poor man of B. to marry a poor parishioner of A.

See title overseers, and pl. 594.

593. Case of the parishes of *Henley* and *Chebbam*, *T. 9 G. 3.* *A.* with her children was removed from *Henley* to *Chebbam*, as the widow of *B.* Upon appeal, a woman was produced to prove that she was married to *B.* long before the supposed marriage between him and *A.* but because she could not produce a certificate, or register of her marriage, (it being in truth a *Fleet* marriage), the sessions refused to admit her evidence. By the court: The sessions have done wrong, for the woman was clearly an admissible witness, though she could not have been so in any case where her husband was a party; because the husband and wife are in law one person. But here the husband himself, if he had been alive, might have been a witness; and wherever the husband may be a witness the wife may. Lord *Mansfield* remembered a case of a *Fleet* marriage, where a woman was admitted as a witness to prove the legitimacy of her own child, in ejectment, and upon her evidence, the defendant had a verdict. In this case the court sent the order back to be re-examined by the Justices, as the woman ought to be examined, and they were the proper judges of the credibility.

Fleet marriage.

Upon a trial in ejectment, a woman was admitted to prove the legitimacy of her own child.

594. *R. v. Smith*, *M. 11 G. 3.* The overseers of *Elborough* having in that parish a young woman, one *Dance*, of about 16 or 17 years of age, and a lunatick: In order to get rid of her and charge the parish of *Haden-*

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ham with her; they applied to one *Jackson* an old man about 80, and one of the poor of *Hadenham* parish, and gave him four guineas and a half to marry her, and carry her into that parish. It was moved for an information, and insisted that this was a great abuse and ought not to be countenanced, but should rather be punished in the severest manner, and cited the *King* against *Bushby*. *East*. 5 G. 2. The court agreed that an information ought to go, not only against the overseers, but also against the parson who married *Jackson* and *Dance*, and granted a rule to shew cause. *N. B.* This was afterwards compromised; so that the rule was never made absolute, nor discharged.

C H A P. XV.

Settlement by continuing in a Parish forty Days after Notice.

See 13 & 14 *Car.* 2. c. 12. — 1 *Jac.* 2. c. 17. — 3 & 4 *W. & M.* c. 11, s. 3 & 5.

If the parish suffers a person to reside six years, and had given him relief, the court B. R. would presume notice, unless it was shewed, that there had not been notice given.

595. *R. v. St. Nicholas*, T. 8 *W.* 2 *Salk.* 472. The fact was, that *A.* being legally settled at *St. Nicholas*, came clandestinely into the parish of *St. Helen*, and lived there six years without giving notice during all that time, at the end of which he was sent back to the parish of *St. Nicholas*. *Per Cur.* If it had appeared upon the order, that the parish of *St. Helen* had taken notice of *A.* and looked upon him as one of the parish, as by relieving him, making him an officer, &c. in that case, after so long a time, we would have presumed notice given, because the notice need not be exactly proved; for the churchwarden to whom it was given, and his witnesses attesting the matter, may be dead; but it is returned on this order, that he clandestinely removed, so that he might easily continue in the same manner, and in such a case we must construe the statute strictly. Order confirmed. 2 *Lev.* 22. *Comb.* 382.

596. *R. v. Talbury*, H. 8 *W.* 3. *Fol.* 123. *Robert Blood* was born in *Talbury*, and served seven years apprenticeship there, which ended in the year 1693. In the year 1694, the blacksmith that lived at *Foston* dying, the principal inhabitants of *Foston*, invited the pauper *Blood* to come and take the shop of the late blacksmith there: He accordingly went thither, and rented the shop and a chamber of the widow of the former blacksmith.

smith for a-year, at fifty-two shillings a-year, and followed the trade of a blacksmith for one whole year, was publickly employed by the lord of the manor, the vicar, and many other inhabitants of *Foston*, but gave no notice in writing. He married in *Talbury*, and had a clandestine lodging there: Two Justices removed him and his wife to *Foston*, and on appeal the sessions quash their order. *Per Cur.* This publick notice taken by the parish might perhaps have satisfied the statute 1 J. 2. But there being doubts concerning the notice prescribed by that act, the statute of the 3 & 4 W. & M. was made to explain it; and this late statute hath particularized the notice, and what shall be tantamount to it, and what not; But this is not among the particulars of that statute; for which reason the order was confirmed. *N. B.* Mr. *Foley* reports this case from a note of Mr. *J. Turton*, who was one of the Justices of the court of *King's Bench* in *Hilary* term, in the eighth year of *King William*. 5 *Mod.* 330. In *Salk.* 476. It is said, that *Blood* rented a shop and chamber for fifty-two pounds a-year in *Foston*, which is evidently a mistake. See *Comb.* 382.

597. *Ryssip* and *Harrow*, *H.* 8 *W.* 3, 2 *Salk.* 525. *Holt* Ch. J. declared, that the possession of land in a parish without living there will not make a settlement, but living in a parish where one has land, gains a settlement without notice; for the act of parliament never intended to remove men from their own possessions; but boarding as a scholar gains no settlement, nor being nursed in a parish. 5 *Mod.* 519.

598. *R. v. Chertsey*, 11 *W.* 3. 5 *M.* 454. Exception to an order of sessions, that the only ground of settlement of the pauper appears upon the order to have been, that the banns of matrimony of a poor person were published in the parish church; and the notice given to the parish must not only be in writing, but the other ceremonies required by the statute 3 & 4 *W. & M.* must be observed, and that being an explanatory act cannot be taken in equity. *Per Cur.* Let the order be quashed.

599. *Rissip v. Hendon*, &c. 12 *W.* 3. A person born in *Hendon* staid there till eleven years old, and then was put to board at *Rissip* for a year, at the end of which he came back to *Hendon*, where he had a freehold. He lived there two years and a half, and then went to *Pinnar*, and boarded there two years, and from thence went to *Harrow*, and staid there two years, and then takes a house, and is licenced to sell ale. *Per Cur.* Taking a boarder to school will not make him an inhabitant, for he has his

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maintenance elsewhere; the same of a nurse child, one put to board is not a sojourner within the act. Sojourning is the act of a free mind, which being put to board perhaps is not, and the Justices by their licence cannot make a settlement. And *Holt* Ch. J. observed, that if a man hath a freehold, though nobody is in possession, and though never so well settled in another place, he may come where his freehold is, though but two acres. *Fart.* 312.

Having a pew in the church, keeping watch and ward, attending as juryman at the leet, working on the highway.

600. *Aldenham* and *Abots Langley*, H. 2 G. 2. *Fol.* 119. About forty years before the making of the order, the pauper took a house in *Aldenham*, with the knowledge of the parish-officers, and continued there unmolested: He came into the parish after the 1 *Jac.* 2. and on the 5th of *October* 1688. The Justices granted him a licence for buying and selling corn: He kept a publick house in *Aldenham*, for about five and thirty years, had five children born and christened in the parish, was placed in a pew in the church by the churchwardens, kept watch and ward, attended as a juryman at the leets, and worked at the highways. The single point was, whether this was tantamount to a notice in writing, so as to gain a settlement under the 1 *Jac.* 2. The court held, that it was tantamount to a notice in writing, and was sufficient to gain a settlement. *N. B.* The opinion of the court is reported to have been, that this was not a settlement, in *Str.* 853. But this was a determination upon the 1 *Jac.* 2. c. 17. It is not very material which reporter is in the right. See *pl.* 596.

C H A P. XVI.

Settlement by paying Parish Taxes.

See 13 & 14 *Car.* 2. c. 12.—1 *Jac.* 2. c. 12.—3 & 4 *W. & M.* c. 11. s. 6.—9 & 10 *W.* 3. c. 11. See *Title Poors Rate.*

What are Parish Taxes, *pl.* 601.—Of the Assessment and Payment of them, *pl.* 606.

A Ssessment to the scavengers rate, or to the repairs of the highway, and payment, shall not gain a settlement, See 9 G. 2. c. 7. s. 6. nor assessment to, and payment of the duties on houses and windows; See 21 G. 2. c. 12. 601,

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601. Paying to the county bridge gains no settlement; Payment to county bridge. for there all the county is liable, and he pays as one of the county, not as an inhabitant of the parish or town where he lives. *Poors Sett.* 1. *Sed Quare*; See the 12 G. 2. c. 29.

602. *R. v. Oakhampton, E.* 7 G. 2. *Burr. S. C.* 6. A tidewater at *Kenton* was rated for his salary to the land-tax in *Kenton*. It was paid some time by himself, and repaid to him by the collector of the customs, and afterwards was paid by the collector of the customs. It was objected, that this was not a payment by the man of his own money, but of the collector's money. Lord *Hardwicke*: Suppose a landlord had agreed to reimburse his tenant, would not his tenant gain a settlement? The collector does not pay this to exonerate the parish, but to improve the man's salary. *Per Cur.* It has been settled, that land-tax is a parish-tax within the act, * and his being taxed for his salary makes no difference. Or, In the case of Tolbon and Boston, Comb. 410. 5 Mod. 331. Being assised to, and paying to the land-tax for two quarters is sufficient. der quashed. See pl. 604.

603. *R. v. Bramley, H.* 9 G. 2. *Burr. S. C.* 75. The pauper inhabited and farmed land at *Armsley*, for which he was charged and paid two quarterly payments to the land-tax only. Lord *Hardwicke*: The act of 3 & 4 W. & M. c. 11. s. 6. does not require a payment for a whole year: The payment of his share is sufficient though it be not for the whole year. He might not reside in the parish during any one whole year; but in part only of two distinct years. The great doubt has been, whether the legislature did not mean parochial taxes; but this has been long got over, and the land-tax has been held to be within the act from the notice of inhabitancy that arises by the parties being assised to and paying it. Orders quashed. Same resolution in the case of *Chidingford*. *Burr. S. C.* 415.

604. *R. v. Fulham, M.* 33 G. 2. *Burr. S. C.* 488. *John Brooks* was assised and taxed by the assessors of the land-tax at *St. Margaret's Westminster*, in proportion to the rent of a tenement which he occupied there for many years at the rent of 6*l.* 10*s.* a-year for the land-tax, and paid the said tax to the collector of the land-tax there. Afterwards he was allowed the said tax by his landlord upon settling accounts with him for rent. The case of *Bramley* was now cited with several others, to shew that assessment and payment of the land-tax gains a settlement. And upon that foot of its being a settled point, the court made the rule absolute, for quashing both orders. Tenant pays the land tax and is afterwards allowed it by the landlord. See pl. 603.

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605. *R. v. Friendsbury, T. 9 G. 3.* Jonathan Bowler, when a boy, hired himself at 30 s. per annum for a year certain to one Siborne, who was boatswain of the *Chatham hulk*, and continued in his master's service for the space of eighteen months; during that time, Siborne the master kept house and lived and resided at *Queensborough* in *Kent* with his family; but the pauper during the first twelve months of his service, laid out and victualled on board the *Chatham hulk* in the river *Medway*, which lay at her moorings there, having the parishes *Chatham* and *Gillingham* on the east side of the river, and the parish of *Friendsbury* on the west side; but the said hulk laid nearest to the parish of *Chatham*. About six months before the said Jonathan Bowler left the service of his said master Siborne, the *Chatham hulk* went into *Chatham dock* to be repaired, and Bowler was, during that time, by the order of his said master Siborne, removed, and laid and was victualled on board the *Sterling Castle hulk*, which likewise laid in the river *Medway*, having the parish of *Gillingham* on the one side, and the parish *Friendsbury* on the other; but the said hulk lay nearer by a third of a cable's length to *Upnor Castle*, which is in the parish of *Friendsbury* in *Kent*, than it did to the parish of *Gillingham*. After the said Jonathan Bowler had been on board the *Sterling Castle hulk*, about five months, the *Chatham hulk* of which his said master Siborne was still boatswain, came out of dock, and the pauper returned on board of her, where he continued about a month, at the expiration of which time he quitted his said master's service. These several hulks are always afloat, and swing round with the change of the tides, the places where they laid were the homes of each of the vessels respectively. After the said Jonathan Bowler quitted his said master's service, he entered himself as a rigger in his majesty's service at *Sheerness*; where he continued to live and reside for about 24 years, and till his removal by order of two Justices. *Sheerness* is a vill and maintains its own poor. The way of maintaining is, "That the gross sum of sixpence per quarter and no more, is stopped out of the pay of every person serving in his majesty's dock-yard, under the commissioners of the admiralty there, for the support of a chest for the maintenance of the poor. That the stoppage is made on every person serving his majesty as aforesaid, indiscriminately, and without any attention to his ability to pay the same, or his being likely to become chargeable to the vill of *Sheerness*, by the pay of clerks of the dock-yard at *Chatham*, (to which that of

" *Sheer-*

“ *Sheerness* is an appendage) before the commissioners of
 “ *Chatham* dock-yard, at the time of paying every per-
 “ son’s wages, and afterwards is paid over by the com-
 “ missioners of *Chatham* dock-yard to the clerk of the
 “ cheque of *Sheerness*, who therewith relieves the casual
 “ as well as the settled poor of the said vill who
 “ never received these stoppages, but are wholly em-
 “ ployed in obtaining orders of removal, and then the
 “ pay books are returned up to the proper officers in
 “ *London*.” This *Jonathan Bowler*, during all the time
 of his residence at *Sheerness*, had the usual deduction of
 sixpence *per* quarter stopped out of his wages by the pay-
 clerks, in the same manner as every other person in his
 majesty’s service there, as aforesaid. There is no legal
 rate made by the overseers of the vill of *Sheerness*, and
 allowed by the Justices of the Peace for *Kent*, for the
 maintenance of the poor there; nor does any person con-
 tribute for that purpose in any other manner than as
 aforesaid, except that when the money stopt out of the
 pay of the persons in his majesty’s service as aforesaid is
 not sufficient for the maintenance of the poor, then vo-
 luntary contributions are collected for that purpose, not
 only from the several householders and persons who live
 there, but from those of the ordinance, captains of ships,
 and such others who are willing to contribute thereto;
 and in which case every contributor gives what he thinks
 fit and no more. That these stoppages are made in conse-
 quence of an application some years ago, from the persons
 in his majesty’s service as aforesaid at *Sheerness*, to the com-
 missioners of the admiralty for that purpose, at the time that
 the vill of *Sheerness* first began to maintain its own poor, in
 order to enable them thereto. The sessions confirmed the
 order of removal from *Sheerness* to *Friendsbury*. Lord
Mansfield: “It is impossible to make the contribution here
 stated a sufficient foundation for gaining a settlement
 under the statute of 3 & 4 *W. & M. c. 11, & 6*. which
 requires the being charged with, and paying his share to-
 wards the publick taxes or levies of the town or parish:
 But it seems a great hardship upon these men, that they
 should pay all this money and yet have no benefit from
 it. The commissioners of the dock-yard must be in-
 formed, that it is improper to suffer this deduction to be
 made for the future. Mr. *J. Yates*: In order to gain a settle-
 ment the person must be rated as well as pay. The whole
 court were clear that the pauper gained no settlement in
Sheerness, by contributing in this manner towards the
 main-

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maintenance of the poor ; and as to his gaining a settlement in *Friendsbury*, they sent it back to the sessions to be re-stated and to have the fact ascertained, Whether the place, where the *Sterling Castle* bulk lay, was within the parish of *Friendsbury* or not ; but it does not appear that it ever came before the court any more.

Of the Assessment to and Payment of Parish Taxes, so far as they relate to Settlements.

If the form of the
poors rate be not
strictly legal.

606. Case of the parishes of *St. Giles Cripplegate*, and *St. Mary Newington*, *Vin. Abr.* title *Sett.* K. 9. Notwithstanding the poors rate be in the form, or manner of making it, not strictly legal, but void ; yet if a person be assessed, and pay to such a rate, he shall gain a settlement.

Taxation with-
out residence,
or without pay-
ment, not suf-
ficient.

607. The case of the parish of *St. Nicholas* in *Abingdon*, *M. 7 W. 3. Skinner* 620. A poor man who had taken a small tenement was rated to the parish taxes, but died before payment or inhabitation for forty days. *Holt* Ch. J. ruled this not to be a good settlement ; for the words of the statute 3 *W. and M.* are "tax and pay;" therefore taxation without payment is not sufficient. And it was ruled in the case of *Talborn* and *Boston* in the same term, that taxation of a person, who after that stays forty days in the parish without giving notice, does not gain him a settlement unless he pays the tax. 2 *Salk.* 523.

House rated, but
not the person
sufficient.

608. Parishes of *St. Mary-le-more* and *Heavytree*, 2 *Salk.* 478. The pauper took a house at *St. Mary-le-more* of one pound a-year, and lived therein a year and a half, and paid the rates and taxes due for the said house. The Justices at the sessions held, that a rate for a house without a rate on the person, was not sufficient to make a settlement ; but the court of *King's Bench* quashed this order for this cause, and held him to be settled at *St. Mary-le-more*.

Payment with-
out taxation not
sufficient.

609. *Solontangbam* and *Worlesdon*, *M. 13 G. Fol.* 136. *Thomas King* had a messuage and lands in the parish of *Solontangbam*, for which he was rated to the poors rate, three shillings a levy, and let part of this to *R. S.* at forty shillings a-year ; the overseer of the poor at one time gathers threepence, at another sixpence, of this *R. S.* as his proportionable part of three shillings. The court seemed to think that *R. S.* did not gain a settlement by

by this payment, because he never was taxed; but a rule was granted to shew cause why the order should not be quashed, which was afterwards made absolute; R. 8. not being taxed.

610. Parishes of *Kinfare* and *Kingstwinford*, E. 4 G. A. rents a 2. Fol. 137. The pauper rented a tenement with the appurtenances in *Kinfare* for three years, at the yearly rent of 4 l. 10 s. and paid all parochial taxes for the same in his own right, but was not rated in the parish books; but the name of R. Cole, the tenant that rented the same tenement before the pauper, was kept in the levy books. The whole court was of opinion that the pauper did not gain a settlement in *Kinfare*, because he was not assessed.

611. R. v. *Harwood*, E. 8 G. 2. MSS. A. rented ten shillings a-year in the parish of *Harwood*, and continued there eleven years, and was charged to the poor rates by the designation of "the occupier of *Roscow's* tenement," but not in his own name. The parish-officers knew that he lived in the tenement, and demanded taxes of him, which he paid according to the contract between him and his landlord, and in his own right. *Per Cur.* He is well rated by the word *occupier*, and has gained a good settlement. See *Burr. Mansf.* 1062. and 8 *Mod.* 38.

612. R. v. *Sarratt*, M. 9 G. 2 *Burr. S. C.* 73. The pauper hired and lived in a house in *Sarratt*, of 7 l. 10 s. a-year; a poor's rate was made for that parish, which was signed by one of the churchwardens and three parishioners, and afterwards by one Justice only. The landlord of the house who never occupied it was charged in the rate, but the tenant paid. Another rate was afterwards made, which was signed by the parishioners; but not allowed by any Justice of Peace, the landlord was charged and the tenant paid. Both payments were made by the tenant upon the demand of the overseers. The exception taken to the order of sessions was that the tenant was never charged. The counsel in support of the order of sessions urged, That two Justices had before made an order on the 24th of April 1734, to remove the pauper to *Bovington*, which had appealed to the sessions; and that their appeal had been allowed, because the inhabitants of *Sarratt* did not produce the order; and the inhabitants of *Sarratt* were ordered to pay costs: notwithstanding which order of sessions, afterwards on the 18th July 1734, two Justices removed the pauper to the same place which they had no power to do, being precluded

Allowance of
appeal not quash-
ing the order,
nor is it any
judgment of the
court.

precluded by the power of the appeal. Lord *Hardwicke*: This is no objection to the present order of sessions being quashed on the merits. This order only allows the appeal, and an allowance of the appeal is no quashing the order of the two Justices. The sessions only declare that the appeal was proper, and give costs against the parish of *Sarratt* for not producing the order: But there is no judgment of the sessions one way or the other; afterwards there is another order by two Justices, and an appeal from it: And the merits are by consent adjourned to a subsequent sessions. We must therefore take it upon the case returned: And it seems to me to be a very plain case. The act requires both a charge and payment, and here is only a payment without a charge. I think the charging is the principal thing, for that is the act of the parish. It may be that they would not change the tenant for fear of making him a parishioner. Order of sessions quashed.

"A. B. one
"shilling ditto
"for the other
"house," assess-
ment on the
landlord.

613. *R. v. Bramshaw, M. 10 G. 2. Burr. S. C. 98.* Two Justices made an order for the removal of *R. J.* from that part of the parish of *Bramshaw* which lies in the county of *Southampton*, to that part of the said parish which lies in the county of *Wilts*, which was confirmed at the sessions, whose special orders states that *R. J.* came into that part of the parish which is in the county of *Southampton*, and took a house there of *Aaron Knight* at the rent of 3*l.* for one year. That the house was there charged to the poor's rates as follows: That is for the year 1734, "One shilling *Aaron Knight*, ditto, for the other "house sixpence," and in the poor rate for the year 1735, "*Aaron Knight* one shilling; ditto, for the little house "sixpence," which said house called the other house, and the little house is the same house, in which *R. J.* lived. That the said *A. K.* was overseer of the poor of that part of the parish of *Bramshaw*, which is in the county of *Southampton*, and collected the same rates, and received the rate so assessed as above of the said *R. J. Per Cur.* It should have appeared, that these were different villis, and had separate officers, and that each maintained their own poor respectively. Whereas here it no otherwise appears, than by the direction of the order of two Justices, that there are different officers. And the direction is no part of the order. Besides, if there be different officers, it does not follow that there are different rates. Here is likewise an express charge upon the owner of the house, not upon the tenant. It is a settled point

The direction is
no part of the
order.

point that a person must be rated as well as pay, to gain a settlement.

614. *R. v. inhabitants of Worth, M. 10 G. 2. Burr. S. C.* Francis Simmons came into the parish of *Merstham* by certificate, dated in February 1709. About Michaelmas 1726, Mary Simmonds his daughter intermarried with R. Scott a Scotchman, not having gained any settlement in England. Mary Harbourn a widow, grandmother of the said Mary, being possessed of three tenements in *Merstham*, by purchase, in consideration of the marriage then lately had between the said Mary Simmons and R. Scott, by deed of feoffment bearing date on the 22d of October 1726, made over and confirmed one of the tenements to them, and their assigns for the term of their natural lives, then to the issue of the bodies of R. Scott and Mary his wife, and for want of such issue to the heirs of the said Mary for ever. The said R. and Mary Scott immediately entered upon, and dwelt in the said tenement till Michaelmas 1735. They since have let the tenement for forty shillings a-year. The sessions adjudge that the said tenement at the execution of the deed, and still, is under the value of 30*l.* and that the said R. Scott had been charged to, and paid the land-tax for the said tenement ever since the date of the said deed of feoffment. The sessions dismiss the appeal, and confirm the order of the two Justices, by which the said Mary Simmons, and her four children were removed from *Westham* to *Worth*. Exception was taken that R. Scott had gained a good settlement in *Merstham* by being charged to, and paying the land-tax there whilst living on his own, though it was under 30*l.* value, and conveyed to him since the making of the 9 G. 1. c. 7. s. 5. A rule was made to shew cause, which was made absolute without defence.

Assessment and payment for a tenement the value by the proprietor who came to it by legal purchase, sufficient.

615. *R. v. Lower Walton, H. 10 G. 2. Burr. S. C.* A. agrees with 100. J. M. father of the pauper having an estate at *Lower Walton*, of, about 3*l.* a-year for which he was taxed in his own right, and had gained a settlement, agreed with his son the pauper (who was then a married man, and had a wife and children), that he the pauper, "should hold the same for a year, and instead of paying rent should maintain his father," which he accordingly did, and his said son and family lived in the said tenement for one year, and his father with him; and the pauper paid taxes for the said tenement of 3*l.* a-year, but was not rated in his own name but in his father's.

his father to live with him, and instead of paying rent to pay the parish taxes, but the father was rated, and the son did not gain a settlement.

Per

Settlement by paying, &c.

A. purchases an estate for 12 l. and pays the taxes, and held to gain a settlement, notwithstanding the 9 G. c. 7. l. 5.

Per Cur. He must both be rated and pay, to gain a settlement. Order quashed.

616. *R. v. Uffculme*, T. 30 G. 2. MSS. *John Hind* the pauper purchased a tenement in *St. Sidwell's*, for which he gave 8 l. in money, and a note for 4 l. more. He lived upon the tenement with his family, and was then rated to the land-tax for the year 1746, in the following manner: "Occupier late widow *Hodper's*, now "*John Hind's* tenement 12 l." He was also rated to the poors rate for the year 1746 as follows: "Occupier of "late *James Hooper's* tenement 3-4ths per week," and for the year 1747 in the following manner: "Occupier of "late *James Hooper's* now *Hind's* 3-4ths per week." He lived upon and paid according to the said rates for his said tenement for about one year, and then sold it, and went to reside at *Uffculme*. The sessions were of opinion that *J. H.* did not gain a settlement in *Sidwell* by being rated and paying as aforesaid, the consideration being under 30 l. The question before the court was, Whether a person occupying a tenement of which he is the proprietor, and which he purchased for less than 30 l. gains a settlement by being rated, and paying to the publick taxes of the parish notwithstanding the 9 G. 1. c. 7. *Lord Mansfield*: It will be necessary to consider how the law stood before the act 9 G. 1. for the sessions have confounded different statutes and different qualifications. Before the 9 G. 1. whoever had a property of his own, however small it might be, was not removeable from it, and this being in consequence of his property and inhabitancy, he gained a settlement. This was found to encourage men to gain settlements by the most trifling purchases; for by one shilling a year purchase, and living forty days in a parish, a settlement was gained there. At that time there were also other ways of gaining settlements; as by the 3 & 4 W. & M. executing a publick' office for a year, or by being charged to, and paying a share towards the publick taxes of the parish. But no abuse arose from these last methods, because every parish might avoid choosing such men parish officers, or assessing them to the taxes. But they could not prevent fraudulent purchases, nor could they remove the purchasers; therefore the statute 9 G. 1. c. 7. makes a provision to avoid those fraudulent purchases, by directing that no person shall gain a settlement by virtue of any purchase, whereof the consideration money *bona fide* paid amounts not to 30 l. for no longer than they are resident. The constructions that have been made of this

this act by this court, shew that it has been the opinion of the Judges, that this act was only intended as a provision against fraudulent purchases; for it has been held not to extend to legal purchases, as by devise or remainder; because as no fraud can be intended from thence, they are held not to be within the purview of the statute. What then is the present case? It is that a man has been rated, and paid for an estate purchased by him for less than 30 *l*. Why should he then not gain a settlement? the statute does not say that he shall not. Two arguments have been used against this man's settlement. First, that the estate is rated, and not the man,—as to the poors rate that is a personal tax, and to be laid on personal estate as well as real; and if a person is very poor he ought not to be taxed.—The rate is on the tenement late *Hooper's*, now *Hind's*, so it is a tax on *Hind's*. The second argument is, that of necessity a man must be rated, and that if so, it is a repeal of 9 G. 1. But I deny that every man should be rated. The 17 G. 2. says that where there is a franchise to be enjoyed, that a man shall not be left out to deprive him of his franchise. Now that act does not say that every man shall be rated, whether able or not, and it is a good defence to a rate to say that he is poor and unable to pay; and you may object against a man who wants fraudulently to be rated to gain either a settlement or a franchise. We are all clear that the true intention of the 9 G. 1. was to prevent a settlement by inhabitancy, by a purchase under 30 *l*. But if he is rated or serves a publick office, by that mode such a person may require a settlement. It is but justice that if a person has contributed to the poor of a parish, that he should be supported, when he wanted relief, by that parish. Order of sessions must be quashed. *Burr. S. C. 430.*

617. *R. v. Painfwick, T. 31 G. 2. 2 Burr. S. C. 464.* The pauper rented a house, and agreed to pay all taxes whatsoever, he took receipts of the overseers in his own name. The poors rate made, was on *Thomas Clifford* (his landlord) or tenant. Lord *Mansfield* was absent: Mr. *J. Denison* thought that the court ought not to be over nice and critical, in requiring a scrupulous strictness as to the form and terms of rating persons, and hinted that rating the house only might, for ought he saw to the contrary, be sufficient, for the parish could not but know who was the occupier. Mr. *J. Foster* and Mr. *J. Wilmot* held, that it was not necessary that he should be expressly named, that this was equivalent

Rate made on
T. C. (the land-
lord) or tenant.

Landlord agrees to pay all taxes, but the tenant is rated thus, "Bowden's," and by the desire of the landlord paid one rate, but was not allowed it again by the landlord, not having asked him.

Agreement between the landlord and tenant as to paying the rates does not affect the parish.

valent to naming him, and that he had gained a settlement.

618. *R. v. Openshaw*, E. 4 G. 3. 2 Burr. S. C. 522. *J. Bowden* rented a house in *Gorton*, at 3*l.* 10*s.* per annum, the landlord agreed to pay all leys and taxes except the window tax, and did pay them for some years; but in the last year, he directed the overseer to call upon his tenant *Bowden* for a quarter's poor ley, and a church ley, and to tell him, that he, (his landlord) ordered him to pay it, and would pay it out of his rent. Upon being told this, *Bowden*, paid both, declaring, that he paid them for his landlord, and the overseer said he accepted them accordingly. But the landlord, not being asked by him to allow it, did not allow it out of the rent till near a twelvemonth after the tenant had left the estate, six days before the order was granted for the removal of the pauper from *Gorton* to *Openshaw*. The rate or assessment for the relief of the poor was signed by three of the principal, but was not signed by the overseers, nor allowed by the Justices, nor published in the church; but that was the only method of collecting the poor ley, during all the said years. The church ley was styled a church ley upon the land owners, but was not signed by any inhabitant. In both these assessments the charge in respect of this tenement was "*Bowden's*." The pauper's name is *Bowden*. Lord *Mansfield*: This is a proper tax upon the tenant, and he is assessed by name *Bowden's*. The agreement between his landlord and him is nothing to the parish. Order quashed.

619. *R. v. Stanlake*, M. 9. G. 3. *Daniel Moore* deceased, late husband of the pauper *Elizabeth Moore*, was originally settled in the parish of *St. Helen* in *Abingdon*, from thence he was removed and went to the parish of *Stanlake* in the county of *Oxford*; he resided there ten or eleven years in a tenement which he rented at 3*l.* 5*s.* a-year. During the time of his said residence, the said *Daniel Moore* paid the poor and constables taxes in his own right, for the said tenement, in the years 1753, 1761, and 1762; part of the said time for which the said taxes were paid, receipts were given for the same to him by the overseers of the poor of the said parish of *Stanlake* for the three years in which the receipts were given, which receipts were produced, when it appeared, "That the landlord of the said tenement was rated for the said tenement, and that *Daniel Moore* the husband and father of the pauper not rated." It is therefore ordered (by the court of sessions) that the said order be made by the

the said two Justices of Peace be, and it is hereby discharged. On *Saturday* 23d of *April* 1768, *Sir Fletcher Norton* and *Mr. Wallace* shewed cause on behalf of the parish of *St. Helen's* in *Abingdon*. They agreed, that he must be virtually rated; but that it was not necessary to rate him by name, and as this man is stated "to have paid these taxes " in his own right," he must consequently have been rated to them, and if he was rated by any one year it is sufficient: Now it only appears, that as to the three particular years for which the receipts were produced he was not rated in them; but it does not follow " that he " was not rated in those other years, for which he paid the " taxes in his own right," nor is it stated that he was not rated in those other years. The court sent it back to be more full and clearly stated, it not being at present stated whether he was or was not rated in and for the other seven or eight years. On *Monday* the 21st of *November* 1768, The case having been re-stated, That he never was rated, nor ever paid these taxes in his own right; but that his landlord was rated, and though *Moore* paid one year, he was repaid by his landlord. *Serjeant Nares* renewed his former motion, and obtained a rule to shew cause, and now on the 28th *Sir Fletcher Norton* gave up his order as at present stated: Whereupon the *Serjeant's* rule was made absolute to quash the order of sessions and affirm the original order

620. *R. v. Stapleton, M. 10 G. 3. John Mortimer* who had gained a settlement at *Stapleton*, afterwards went to live with his mother as part of her family at *Stoney Stanton*, where she had a house, and a small parcel of land which she occupied herself; whilst he so lived with his mother, he was in two rates on houses and lands only in the said parish of *Stoney Stanton*, and not upon personal estate, (the one a poors rate made the 10th of *October* 1765, the other a church rate made the 19th of *April* 1764, both which were for defraying the expences for that year 1765,) charged as occupier of the land belonging to his mother, and paid such assessment, although he did not at any time in the year 1765 occupy the said land or any other house in the said parish: At *Ladyday* 1766 he entered upon the land belonging to his mother, at the yearly rent of 5*l.* 10*s.* and occupied the same till the *Christmas* following, and no longer; but neither was charged with, nor paid his share towards any of the publick taxes, or levies of or for the said parish for the time he occupied the said land. *Mr. Solicitor General*, in support of the rule to set aside the order of sessions, insisted, that the rating and paying was tantamount to notice, that

A. comes to live with his mother in a tenement belonging to her, and is rated, and pays a poors and church rate, but did not occupy that or any other tenement, and was held to gain a settlement.

Settlement by paying, &c.

a person came to inhabit in the parish, and was substituted instead of it, and that the parish officers could not presume to say, that they had no notice of the pauper's residing within their parish. Mr. *Wallace* on the other part insisted, that the words of the act of parliament require the rating a person in proportion to his share, which must mean in proportion to what he occupied; that as he did not occupy any thing when he was rated, he could not by the terms of the statute gain a settlement. Lord *Mansfield*: Being rated and having paid, is sufficient to gain a settlement, the sessions have done wrong. Mr. Justice *Yates*: The notoriety is sufficiently evinced by the officers taking notice of him, and rating him; I am therefore clearly of the same opinion, that he gained a settlement.

C H A P. XVII.

Settlement by executing an Office.

Of the Appointment, *pl.* 621. — What Office, *pl.* 624. — On whose Account, *pl.* 629. — For what Time, *pl.* 632. — And in what Place to be executed, *pl.* 634.

See 3 & 4 *W. & M. c.* 11. *f.* 6. And 9 & 10 *W.* 3. *c.* 11.

Clerk of a parish appointed by the parson,

621. *G Atton* and *Milwich*, *H. 10 Ann.* 2 *Salk.* 536. The question was, shall one appointed clerk of a parish by the parson, and executing the office for a year, gain a legal settlement, within the 3 & 4 *W. & M.* of which the words are, shall execute any office or charge. Mr. *Lechmere*: The intent of the act was, that no office under an annual one should gain a settlement, and *majus continet in se minus*; on the general nomination to the office of the parish clerk he is in for life. *Powel* Justice: His being put in by the parson makes no difference, any more than where the constable is put in by the lect, and not by the parish, it is more than an annual

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annual office, he is not removable, and has fees, *Eyre* Justice: He is but a servant to the parson at will; when he comes in by election, he has an estate for life by custom; but here is no deed nor writing: How can he have an estate for a life in this office? *Powel J.* By the same way of reasoning he was not even an officer at will, for even that cannot be without deed. The office of churchwarden was at common law, and yet that is for a year without any deed or writing; so it is of a parish clerk, he is by common law an officer, and is in for life without deed. Ruled in the absence of the Ch. J.

622. *Case of Peake and Bourne, M. 6 G. 2. Str. 942.* Licence of the *Per cur.* The licence of the ordinary is not necessary for a ordinary. parish clerk.

623. *R. v. Wingham, M. 17 G. 2. Burr. S. C. 223.* *J. H.* the pauper was born at *Wingham*, under a certificate from *Sellinge*, and gave evidence at the sessions, that during his abode at *Wingham*, his wife told him upon his return home, that a person, whom the said *J. H.* knew of his own knowledge, was boroughholder of the borough of *Wingham Street* in the said parish, had left a wooden tally for him at his house, as a token, that he the said *J. H.* had been chosen at the court leet held for the manor of *Wingham*, boroughholder, for the borough of *Wingham Street*, within which manor the borough of *Wingham Street* lies; his wife also told him, that she had burnt the tally before his return; the said *J. H.* did not know of his own knowledge, that he was chosen boroughholder, nor was the record or presentment of the jury of the leet, or any other evidence, that he was elected boroughholder, offered to the sessions: The said *J. H.* never took the oath of office of a boroughholder for the said borough, nor was sworn into the office; but within a twelvemonth after this conversation with his wife he executed one warrant of a Justice of Peace directed to the boroughholder of the said borough: But was willing and ready to execute the said office, and during the said year he had a house in the said parish, wherein his family dwelt; but he himself part of the year worked at his trade of a carpenter at *Ramsgate*, twelve miles from *Wingham*, and often was absent from his family from Monday to Saturday. The borough of *Wingham Street* is not of so great extent as the parish of *Wingham*, part of which reaches into another borough. Lord Ch. J. *Lee*: It does not appear whether the wife of *J. H.* was not

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alive; if she was alive, her own evidence ought to have been had, and not her husband's account of what she told him: The circumstance of the man's going to work out of the parish is entirely insignificant: Where facts are specially stated upon an order; the court must conclude, that all the evidence which appeared to the sessions was stated by them. The act requires a legal placing in the annual office. It is stated negatively, that there was no presentment, admission or swearing: Here is no foundation for supporting a legal placing, the evidence of being told of the tally merits no regard; it is yet worse if the wife be alive, because if so, she should have given it herself. It was determined in the case of *St. Mary and St. Lawrence Reading*: (*Lucas* 13.) That it was executing an annual office in the parish, though the borough extended further than the parish of *St. Lawrence*: But as no presentment was offered in evidence, we must take it for granted, that there was no presentment. The other three Judges concurring, that here is no evidence, such at least as could be regarded, of the legal placing in the office: The order of sessions was quashed.

What Office.

Wardens of a
borough.
Pl. 623.

624. *R. v. Reading*, 12 *W. 3. Fort.* 311. *A.* was elected warden for the borough of *Reading*, but exercised in the parish of *St. Lawrence* there. *Per Cur.* Though it is not a parish office, yet being a publick annual office, which is in the nature of a tithing man's, he is settled in the parish of *St. Lawrence*: A constable though chosen by the leet, if he exercises his office in a parish gains a settlement there, otherwise if a deputy. *Vin. Abr. Sett. G. 3. In Foley*, 121. This case is wrongly stated.

Constable chosen
by a leet.

Collector of the
land-tax.

625. *R. v. Hammond*, *H. 7 G. MSS.* Collector of the land-tax is a sufficient office within 3 & 4 *W. & M.* and it is not necessary, that the office should be a parish office; any office is sufficient, so that by the notoriety it may be presumed the parish had notice of the person's being come into the parish. *Per Prat. Ch. J.*

Collector of the
duties given by
6 & 7 *W. 3.* on
births and bur-
ials.

626. Case of *Bisham and Cook*, *H. 7 G. MSS.* The sessions setting out the fact specially, adjudge the settlement of a poor person to be at *Bisham*, because when he lived in that parish he executed the office of collector of the duties given by the 6 & 7 *W. 3.* 6. 6. on births and burials.

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burials. It was moved to quash it, because this was not a parish office; and it would be giving the commissioners (who are to appoint the collectors) a power to bring what charge they would upon the parish; besides it was not stated in the order, that this was an annual office, as it must be to give a settlement within the express words of the act. By the court: The reason why the executing offices gives a settlement without notice is, because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice: can any thing be more notorious than this? Which is to collect a duty from house to house. We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not be a parish office, but a publick annual office in the parish: And as to its not being said, that this man executed it for a year, we must take it he did, because it appears on looking into the statute, that the power given to the commissioners is to appoint a person who shall be collector of the duties for a year, and then give in his accounts. It hath been held a settlement in the case of the land-tax, and why not in this? And the order was confirmed. *Str.* 411. *Foley* 124.

627. *Burlifcomb* and *Samford Peverell*, *H.* 9 *G.* *Str.* Office of tithing-
444. *Per Cur.* The office of tithingman is an annual man.
office in the parish within the words and meaning of the
9 & 10 *W.* 3. c. 11.

628. *R. v. Milburn*, *E.* 18 *G.* 2. *Wils.* 87. *T. M.* Schoolmaster
was certificated to *Milburn* in 1733, and lived there till not an officer.
1743, when he died, and taught the charity school there
till his death, but it did not appear in what manner he
was placed therein. *Lady Anne Hastings* had by deed
conveyed 10 *l.* *per annum* in trust to be paid to the vicar
of *Milburn*, for the time being, for the charity school,
which had not been appropriated to any other purpose
than that of paying it to the schoolmaster; the question
was, whether *T. M.* had gained a settlement, either as
having a freehold in the school of 10 *l.* *per annum*, or as
having served an office. *Per Cur.* A schoolmaster is
not an office, but only an employment; what interest he
had in the employment, whether for life, or how other-
wise, or how he came into this employment, does not
appear: it seems, that the vicar is the person intitled
to the 10 *l.* *per annum*, and not chusing to teach the
school himself, paid it to this poor man as his deputy,
which could not gain a settlement for any person what-

soever. Order quashed. *Str.* 1225. *Burr.* 244. See the 13 & 14 *Car.* 2. c. 4. s. 10.

Upon whose Account.

Serving the office of constable as deputy.

629. *Lothsome* and Sheriff *Hales*, *Vin. Abr.* title *Sett.* G. 2. A person sworn into, and serving the office of constable as deputy to another, does not gain a settlement.

Deputy to a constable.

See pl. 631.

630. Case of *Winterbourn*, *H.* 4 G. 3. *Burr.* S. C. 520. The jury at the leet, according to the custom presented Mr. *Baily* as constable, who procured the pauper to serve for him, intending, that the pauper should by that means gain a settlement. The pauper was accordingly sworn into that office by a Justice, and served the same for a year; but was not presented to it at the court leet as constable in his own right. The court was clearly of opinion, that he did not gain a settlement.

A. was presented, but by his desire B. was sworn.

631. *R. v. All-Cannings*, *H.* 9 G. 3. The case states, that it is the custom of the parish, for the office of constable to be served by rotation of the houses; that it came to the turn of A. who was presented; but not choosing to serve the office himself, and meeting with the pauper said to him, "go up into court and be sworn in my room," and that he was accordingly sworn; that at the end of the year, A. paid the pauper his expences, and that the court gave A. leave to put the pauper in his stead. Mr. *Solicitor General*: I apprehend that the pauper did not serve this office on his own account, for the pauper was sworn as the deputy of A. who was presented according to the custom, and he was paid by A. those expences which he incurred on his account: To prove this man a deputy, I need only cite the case of *Winterbourn*, though there are many others. Mr. *Serjeant Burland* observed, that there was a wide difference between this case and that of *Winterbourn*, in which it appeared, that the person acted as deputy; but that in this he acted entirely for himself: In that case there was no presentment of the deputy, which the custom required, and the determination, that the man was not sworn according to the custom. Lord *Mansfield*: The only question is, whether he has executed the office for himself, and on his own account. The certificate act indeed makes it necessary, that he should be legally placed therein. The house of A. was in rotation, he desires the pauper

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to serve for him. Who was benefited by it? *A.* because it discharges him from serving it again. For whom did he serve? For *A.* because *A.* paid him his expences: And the sessions have said, that he did not serve for himself, and on his own account. Mr. *J. Aston*: It might have been a sufficient appointment, upon a *quo warranto* for an usurpation; but not such a one, as to give a collateral right. Mr. Justice *Yates* and *Willes* were of the same opinion.

For what Time.

632. *R. v. Fittleworth, M. 18 G. 2. MSS.* William *A.* was appointed Overington the pauper came with a certificate from *P.* tithingman for a manor, which in 1736, to the parish of *Fittleworth*. In October 1743, included part of he was chosen at a court leet of the bishop of *Chichester* the parish in for the manor of *Amberley*, (within which manor *Fittleworth* lies), tithingman for the tithing of *Cold Waltham* which he resided. But becoming in the said county; which said tithing doth not extend chargeable was through all the parish of *Fittleworth*; but comprehends removed before that part of it wherein the pauper resided. He continued the expiration of the year. to execute his office till the 30th of *March* 1744: but on the 27th day of that month, he became chargeable to the parish, and an order of removal was made and executed on the 30th of *March* 1744. Mr. *Lloyd*, in support of the order of sessions: This case depends entirely upon the 9 & 10 *W. 3.* which is the only act which provides for the settlement of certificated persons, and as it tends to enlarge the liberty of the subject, it ought to have a liberal construction. That act does not require the execution of an annual office for a whole year, (and he cited the case of *Garlington*.) If the legislature had intended, that the execution of the annual office should be during a whole year, they would have said so in this act, as well as in that of the 3 & 4 *W. & M.* for there the words "during one year" are inserted. It is of no consequence, that he is not tithingman for or throughout the whole parish, because the reason why certificate-men are admitted to gain settlements by executing an office, or by renting 10*l.* a-year is, that those circumstances prove them to be men of substance. If a man rents a tenement of 10*l.* a-year, and should die within a month after he took it, without doubt, that would gain a settlement for his family: Neither does the statute say, that the continuance in

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the annual office must be for a year. It is not in the power of the Justices to remove an officer or servant of the publick any more than a servant or apprentice who is under contract with a master. *Sir John Strange*: A certificate person shall not be in a better situation when he comes into a parish, than a pauper who comes in under the 3 & 4 *W. & M.* who must serve the annual office during one whole year. These acts must be taken together, and the one construed by the other. In the case of the parish of *Garfington*, the office was served during one whole year, and though the pauper was not sworn till half a year after the election, yet reference might then be had to the time of his election, in the same manner as if administration is granted many years after the death of the intestate, yet then it shall have reference to the day of his death. *Lord Ch. J. Lee*: The question is, whether a person coming into a parish under a certificate, is made a tithingman, and exercises his office in part only of the parish, and for half a year only, gains settlement: To this three objections have been made, first, that the order of removal is bad, because at the time when he was removed, he was in the execution of a publick office, from whence they had no power to remove him, and it has been compared to the case of a servant, whom the Justices cannot remove; but to this they have not cited any authority; and if a servant should become chargeable to a parish, I think he might be removed. This act of the 8 & 9 *W. 3.* describes the time when a certificate man shall be removed, that is when he becomes chargeable, without any limitation; so that the justices by this act had certainly a power to remove the pauper. The second objection is, that this office did not extend to the whole parish; but it is stated in the order, that he exercised it in the parish, which is complying with the very words of the act of parliament, which says, that he shall execute it in such, and not through such parish; As to the third objection, which is the chief; I do not know, that any case has been determined as to that purpose. That of *Garfington* was never determined, and besides differs essentially from the present case, as *Sir John Strange* has shewn. The 3 & 4 *W. & M.* differs in words from this act, yet it would be odd to place him on a different footing from other paupers who are to gain a settlement by the exercising of annual offices, and that is for and during a year, which must be then a construction of this act, otherwise

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wife the bare placing a certificate-man in office would gain him a settlement immediately: As to the case of Mr. *Lloyd* about entering of a tenement, there are no words about his living a year, and it is the credit he gets by the hiring, that fixes him in the parish; but in the present case he gains it by the execution of the office, and though the words of the 3 & 4 *W. & M.* have no relation by words to this act; yet I should think it ought to have the construction. *Wright* and *Denison* Justices, of the same opinion. *Burr. S. C.* 258.

633. *R. v. Woodchester*, *H. 31 G. 2. Burr. Mansfield* 502. There being a custom at *Cold Aston*, to serve the office of tithingman for half a year only at a time; the pauper served it half a year accordingly, and twenty years after for another half year. And the court held it not to be such an annual office, the service of which could gain a settlement.

Custom to serve the office of tithingman for half a year.

In what Place.

634. *R. v. St. Maurice in Winchester*, *H. 8 G. 2. MSS.* *A. was chosen one of the constables for the city of Winchester, which consists of several parishes, and executed that office through all parts of the city.* *William West*, went in 1715 to *St. Mary Calendar*, with a certificate from the parish of *St. Thomas*. About 1721, he was chosen one of the constables for the city of *Winchester*, which consists of several parishes, and was legally placed in, and executed that office, in and through all parts of that city, during one whole year; and some years before, and ever since he resided and inhabited in the parish of *St. Mary Calendar*. Afterwards he took *Joseph Talmage* apprentice by indenture, who continued with him four years and a half, and afterwards married and intruded into the parish of *St. Maurice*, from which he was removed into the parish of *St. Mary Calendar*. The sessions were of opinion that he did not gain a settlement by such apprenticeship with such a person. The question now was, whether *William West* had discharged the certificate by executing that office of constable. See 9 & 10 *W. 3. c. 11.* and consequently, *Talmage* enabled to gain a settlement by serving an apprenticeship to him, notwithstanding the 12 *Ann. st. 1. c. 18. s. 2.* Lord *Hardwicke*: Parishes were obliged by the 9 & 10 *W. 3.* to receive persons coming to them with certificates, and therefore in point of justice, they ought to have it in their power to adopt such persons into their parish, or exclude them, at their election: But if serving the office of constable who is an officer eligible in the leet, which may not be coextensive

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tensive with the parish, may gain a settlement, then persons may gain settlements in parishes, against the will of the parishioners, which the law does not intend. Mr. J. Lee: If it was otherwise, nobody could gain new settlements; for the parishes to which certificated persons come, would take care to exclude them from any trust. The consent of the parish was not attended to by the legislature under the 3 & 4 W. & M. Hired servants and apprentices gain settlements, and the parish cannot prevent it. The churchwarden named by the parson is an annual officer, though the parish has no share in his election; and so is the parish clerk. Every person, who serves the publick in such capacities, must be considered as unlikely to become chargeable; and this is the true foundation of such settlements, that the persons to be settled have contributed to the publick good, by executing those offices, and being chosen into them by a competent authority, they are much more likely to promote the publick good of the parish they live in, than to be burthensome to it; and on this footing, the law, as it thinks them worthy of a settlement, has conferred it on them, without attending to any persons consent. In the *Easter* term following, Lord *Hardwicke* said, that upon full consideration he was satisfied, that the same construction ought to be put upon both statutes. Certificate-men are disabled by the 8 & 9 W. 3. from gaining any settlements, and the parish, which gave the certificate, is by that act expressly required to take back their parishioner whenever he becomes chargeable to the parish where he lived. Under this act, though a parish had the benefit of a certificated person's labour and strength in his youth, yet when he should have become old and helpless, they were under no obligation to relieve him; but might immediately send him back to his old settlement, and that parish was bound to receive him. This was a great hardship on parishes giving certificates; and therefore the 9 & 10 W. 3. enabled certificate-men to acquire settlements by executing an annual office, &c. This act is therefore to be considered as an enabling law. The only question therefore is about the sort of office, which he must execute for this purpose. The words of the 3 & 4 W. & M. are, "if any person shall on his account execute any publick annual office or charge in the said town or parish during one whole year;" and the construction on this has been, that if he serves any publick annual office, though not immediately concerning the

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the parish in which he lives, that he shall there gain a settlement. The court construing these words, "in the said town or parish," not as importing an office in the town or parish, but more largely any office, while the person remains in the said town or parish. Then the 9 & 10 W. 3. capacitates a certificated man to gain a settlement by executing some annual office in such parish, being legally placed in such office. The objection, that such office must be parochial, drawn from the penning of the act, depends upon the omission of the word *town* in the latter statute: But this makes no difference, for the word *town* in the former statute does not relate to the office, but only to the residence, and means no more than such a place where by law a man may gain a settlement, as Vill, Hamlet, &c. that maintains its own poor, and which to that purpose is a parish. The 9 & 10 W. 3. therefore, although using the word, "parish" only, implies as much as the 3 & 4 W. & M. and in my opinion, the penning of those acts is to this purpose the same. I see no reason why a person, who comes under a certificate, should be under greater hardships than he who does not. Mr. J. Lee: Settlements are given as a reward for labour, and the poor laws in favour of them have always been construed liberally, because they are made in restraint of liberty; every man being anciently free to go wherever he had the best probability of maintaining himself. This was declared by the court, in the case of the parishes of the *Holy Trinity and Garfington*, H. See pl. 632. 2 G. 1. The pauper in that case being a certificate-man, was appointed tithingman by the steward of the hundred of *Bullington*, and executed the office for a year, though he was not sworn in till half the year was expired. And the only question made by Lord *Macclesfield* and the court was, whether he was legally placed in the office as required by the 9 & 10 W. 3. for as to his settlement, supposing him to have been sworn, there was no doubt, and the lawfulness of his admission was the only point which the counsel were directed to speak to by the court. And in *Hilary* term following, the counsel against the order finding the court strongly inclined to confirm it, took exception to the original order of removal, that it was made without complaint, which being a fatal objection, both orders were quashed. But however this case proves clearly, that if the pauper was legally admitted into the office, although it does not concern the parish, the court looked upon it as sufficient to gain a settlement.

It

It was said also in that case, that the appointment by any person to any publick office of a publick authority, took off the presumption of the person's becoming chargeable, and answered all objections, of the persons settling themselves in places against the will of the parishioners, because it was unreasonable to suppose, that the lord of a leet or corporation would appoint a beggar to an office of trust. So in the case of *Eastwobay and Beccles*: A certificate-man married a copyholder who lived on her own estate, and it was argued, whether the marriage made a settlement for him. It was urged that by the 9 & 10 W. 3. a certificate-man had only two ways of gaining a settlement by executing an annual office, or by renting 10 l. a-year; and the act having the negative words in it, and therefore to be construed strictly, the pauper could not gain a settlement by any other way whatsoever, but those mentioned in the statute: but the court held, that these laws concerning the poor were to be favourably extended, and that it would not be the intention of the parliament to disable people from gaining settlements upon their own estates, as this copyhold was the pauper's after his marriage; and therefore it was held, that his settlement was there: And the court declared expressly, that the act of 9 & 10 W. 3. was not to be looked upon as an explanatory, but as a new law enlarging the opportunities of gaining settlements. Mr. J. Page and Mr. J. Probyn spoke to the like effect; and by the court, the order of sessions must be quashed, and the order of Justices confirmed.

A. was appointed bailiff of a borough which was not one fifth part of the parish.

635. *R. v. Whitechurch*, T. 27 & 28 G. 2. *Burr. S. C.*
 365. The pauper was nominated at the court leet, and sworn into the office of bailiff or ale-taster for the borough, and executed it for a-year: The said office consists in inspecting weights and measures within the borough, and in warning the jury to serve at the court-leet there: The borough is not one fifth part of the parish; and the bailiffs have never executed any authority over the parish at large: Great part of the parish knew nothing of such office. New married men and new comers were frequently nominated for the sake of what they called *Colt Ale*. By the court; this is a good settlement.

C H A P. XVIII.

Settlement by renting a Tenement
of the Value of 10 l. a Year.

Of the Nature of the Tenement, *pl.* 636.

—Value, *pl.* 645. —Hiring or taking, *pl.*

648. —The Time for which, *pl.* 651. —

And the Place in which to be taken, *pl.*

654. —Occupation, *pl.* 657. —Residence, *pl.*

956. —Dissolution of and coexisting Contract,

pl. 662. —Interest of Executors and Admini-

strators, *pl.* 665.

See 13 & 14 Car. 2. c. 12. & 9 & 10 W. 3. c. 11.

636. *Elvelyn* and *Rentcomb*, H. 10 Ann. 2 Salk. 536. A water-mill.

Question before the court was, whether renting a watermill of 10 l. a-year will gain a settlement.

Per Cur. A mill is a tenement, and the renting thereof must gain a settlement.

937. *Kinveer* and *Stone*, H. 12 G. Str. 678. The A rabbit warren.

pauper rented a rabbit-warren, and a cottage upon it at 10 l. a-year. *Per Cur.* It is the ability of the man to

pay 10 l. a-year, which is the foundation of the settlement, whether he pays it for a house for habitation, or for a warren which brings him in profit, is not material.

638. *R. v. Minchinghampton*, E. 3 G. 2. Order specially stated, a poor person rented in the parish of *Bisley*, lands Hiring the pasture of the yearly value of 8 l. from his father, a house of ture of a piece of land.

the yearly rent of 1 l. 10 s. from his uncle, and the same year he took the pasture of a piece of land in the

said parish from *All-Saints-day* to *Candlemas*, and paid 12 s. for the same, which piece of land was worth 6 l. a year :

it was urged, that this was a good settlement, because during those three months the man was not removable :

But in this case the court held, that taking the pasture of a piece of land was not more than taking the herbage,

or than taking the common, which could not be esteemed part of a tenement within the meaning of the

statute, but seemed to think, that if the words had been, that he had taken a pasture ground for three months,

that

that would have made a good settlement. But the case went upon another point; namely, for want of adjudication. *Str.* 874. *Burrow, Mansfield, 762. Burrow's S. C. 316.*

A prisoner in the Fleet takes a house.

639. *St. Margaret's Westminster, and St. Mary's Ludgate, H. 5 G. 2.* A Fleet prisoner took a house of 25*l.* *per annum*, within the rules, and lived in it eight years, and paid all taxes, he gained a settlement. *Str.* 924.

A. occupies a house and windmill, and pays rent for both, but security was given to the landlord of the mill by a third person.

640. *R. v. Butley, T. 10 G. 2 Burr. S. C. 107. Thomas Chandler* came from *Butley* to *Benhall* with a certificate, and took a lease of a windmill for three years at 14*l.* *per annum*, and occupied and paid the rent for the same; but the landlord forced *Chandler* to get a person to be security for the rent.—He also rented a cottage and some lands at 3*l.* *per annum*; at the same time by personal agreement from year to year, and at the end of the three years, the landlord let it to *Chandler* as long as he would pay for it.—It was insisted, that this could not gain a settlement; for though a water-cornmill has been held to be a tenement within the act; yet a windmill could not be considered as such, because it has no house or place of residence as other mills have: And besides this man could not be taken to be a man of stock and substance, which was the intention of the statute; for the landlord insisted on security for the payment of his rent. *E. contra*, it was said, that this point had been determined concerning mills in general, in the case of *R. v. Inhabitants of Guildford, H. 8 G. 1.* That the giving security could make no difference since the pauper himself paid the rent. By the court, it has been endeavoured to distinguish between renting lands and a mill, because a miller has no stock; but this objection has been often over-ruled: The words of the act are "*bona fide*," and what can be better evidence thereof than payment of the rent. If a man rents lands or a mill of 10*l.* *per annum*, without any house in the parish, he gains no settlement; because he cannot reside thereon without a place of habitation. But here the pauper held a cottage and lands at 3*l.* *per annum*, at the same time that he held the mill at 14*l.* *per annum*; and therefore he gained a good settlement.

Agisting cattle.

641. Case of the parish of *Linwood, 1745. MSS. A.* rented 7*l.* *per annum*, in the parish of *Linwood*, and agisted three cows to pasture from *Mayday* till *Martinmas* by agreement for three years successively; for which he was to pay 3*l.* 10*s.* This case was referred to Lord Chief

Chief Baron *Parker* at the assizes, who gave his opinion at his chambers, that this did not gain a settlement, and that to answer the description of a tenement with the act of parliament, it should be a renting a house or ground of the yearly value of 10 l.

642. *R. v. Lockerly, H. 25 G. 2. Burr. S. C. 315.* *Edwards* rents for a year in *Lockerly*, a dairy of sixteen cows, with the dwelling house and feeding for them on twenty-one acres of clover land, and thirteen of meadow land, with the after-lease of a mead; together with feeding for pigs and a horse; he was to have also all the short wheat, and five tons of hay for the use of the cattle, if wanted: His landlord was also for the feed of the cattle to cause ten acres of the clover ground, and thirteen acres of the meadow, to be laid up at *Candlemas day*, and to put the dwelling-house and premises into repair. The messuage or tenement, and dwelling-house were of the yearly value of 25 l. (*Quere*, whether it should not be 25 s.) distinctly from the dairy, and the rest of the premises in the said articles, which were of the annual value of 50 l. The Ch. J. was absent; and Mr. J. *Wright* said, that the word *dairy* is explained to mean cows, though the words, *let* and *demise* are used. The land seems to have remained to the landlord, for he was to lay it up at such a time. A tenement must lie in tenure, and must relate to lands; but this contract relates to cows: The pasture of the ground generally is not let, but only the feeding of sixteen cows; he could not feed other cattle upon it. This is merely personal, no interest in the land passes, or was intended to pass. The case of *Minchinghampton* was not determined upon the point of renting the pasture of the land; but was quashed for want of an adjudication. Mr. J. *Denison* and J. *Foster* were clearly of opinion, that this was merely an agreement for a personal thing, and that it does not come within the meaning of the word *tenement*, upon which a man may be settled. Order quashed.

Renting a dairy of cows, and feeding for them on clover and meadow land, &c. does not gain a settlement.

643. *R. v. St. Margaret, Fishstreet, H. 11 G. 3.* That in 1767, *John Small*, Esq; then and still residing in *Clapham*, at his own house, contracted and employed the pauper's father to supply him with a pair of coach-horses for a quarter of a year, at twenty-two pounds; and the pauper's father contracted with the said *John Small* for a stable belonging to the said *Small*, and was pay two pounds ten shillings for a quarter for it; and the said *John Small* reserved a separate stable for his own use. This contract

tract was performed between the parties for two years and upwards, during which time the pauper rented six pounds *per annum* in *Clapham*. The sessions held this no settlement. Mr. *Dunning* was to contend, that this was not a sufficient renting within the words of the statute; but that it was to be considered merely as a deduction out of the money the master was to pay for the horses; but desired it might stand over for Mr. *Baynham* to argue it: Intimating that he (Mr. *Dunning* could not argue that it was not sufficient renting,) and of this opinion the court seemed most clearly, saying it might stand over; but the case was pretty well broke. On the last day of the term the case was brought on contrary to expectation, when Mr. *Dunning* gave it up; but said, that he supposed that the case intended to be stated for the opinion of the court was, Whether the master deducting money out of what was to be paid for the hire of the horses could be deemed a renting, and in which case he said, there could be as much difficulty to contend that it was, as in the present case it would be to contend that it was not. Mr. *J. Aston*: There can be no doubt but it is a good renting: Suppose the master had paid the servant his whole wages, might not he have brought an action for the occupation and use of the stable? Mr. *J. Willes*: We give our opinion on the special state of the case, and think it a good renting. Mr. *J. Ashurst* of the same opinion. Order of sessions quashed.

644. *R. v. Inhabitants of St. George's, Hanover Square, T. 11 G. 3.* A special order of sessions was made subject to the opinion of this court, "Whether upon the following facts, the pauper *John Malcomb* gained a settlement in the said parish of *St. James's*." The said *John Malcomb* the pauper about twelve years ago, hired of Mr. *John Reynolds* the first and second floors unfurnished, of a house of the value of forty pounds a-year, in the parish of *St. James's Westminster*: The pauper furnished this part of the house, and held the same entirely to himself and inhabited therein seven years, and paid for the same ten pounds a-year, clear of all deductions, to the landlord *John Reynolds*: During all that time there was only one door, and one stair-case, which were used in common by the pauper, and other persons who resided in the house. Mr. *Bearcroft* said, The sessions had mistaken the law, in supposing that the pauper did not gain a settlement in *St. James's*, and he obtained a rule to shew cause, why their order should not be quashed. Mr. *Lucas* now moved

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ved, (just before the rising of the court, at near ten o'clock at night) upon an affidavit of service, to make the rule absolute without defence.

Of the Value of the Tenement.

645. *R. v. Southwold*, *H. 13 G. 2. Burr. S. C. 140.* Tenement worth 6l. a-year, with covenant to build a stable by which it would have been worth 10l. a-year.
Town of *Southwold* in *Suffolk*, was in the margin of an order of removal made by *T. C. Esq.* and *T. N. Gent.* two of his Majesty's Justices of the Peace for the said corporation, which with the order of sessions being removed into *B. R.* It was holden, that a tenement worth only 6l. 10s. *per annum*, with a covenant to build a stable, &c. &c. which was never performed, but by which the landlord might have made it worth 10l. a-year, is not a sufficient taking to gain a settlement under 12 and 14 *Ch. 2.* also, that the original order need not specify the ages of the children; where it expressly adjudges the place to be their settlement, that "upon due proof" is sufficient; and that "town of *Southwold*" in the margin, and "Justices of the said corporation" in the body of the order, is well enough.

646. *R. v. Weston*, *T. 13 & 14 G. 2 Burr. S. C. 166.* A. in order to gain a settlement, which had for some years let for 10l. a-year, but which before that time let for 6 or 7 l.
The pauper rented a farm at *Kirton* for one year, for which he paid 10l. which was the rent the farm had been let at for five or six years then last past, but was formerly let for no more than 7l. *per annum*; he and his family continued there for ten months, but had not sufficient money to stock it with which he first took it: He was only told the estate was too dear at 10l. *per annum*; but he said he did it only to gain a settlement, and did not regard the dearness of it; but desired the former tenant, to whom he said this, not to take any notice of it. Question was, whether he gained a settlement at *Kirton* under these circumstances; and it was objected, that the Justice should have stated, that the farm was not worth 10l. *per annum*: For if it was not worth that he would gain no settlement by it, though he gave the rent for it; and here it appears to be only worth 7l. *per annum*, and the case of *South Sidenham v. Lamington* was cited, where *Parker Ch. J.* said, the settlement depends upon the value of the tenement, and not on the rent: And as in that case they had stated the value to be 13l. *per annum*, the pauper gave but 7l. for it; yet the value being computed, he gained a settlement. *See pl. 659.*
See pl. 659.

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The question will be, whether it appears on this case, that the farm was under the value of 10 *l.* It is found, that he took the tenement at 10 *l. per annum* and that it had been let at the same rent before, only they say it was formerly let at 7 *l. per ann.* which will not be sufficient; for they should either have stated a fraud, or said it was not worth 10 *l. per ann.* and the saying he had not stock sufficient will not avail, and I think it a good settlement at *Kirton*. *Chapple J.* When a man is sent to a place of settlement (which he gained by renting 10 *l. per ann.* from another parish, there it is necessary that the order should say that it was worth 10 *l. per ann.* but where (as in this case) they are endeavouring to send the pauper from a settlement gained by renting 10 *l. per ann.* they should find that it is not worth 10 *l. per ann.* Held *per Cur.* a good settlement at *Kirton*. *Str.* 1156.

647. *R. v. Kniveton, E.* 33 G. 2. 2 Burr. S. C. 499.

What agreement between joint-tenants as to rent cannot enable one of them to gain a settlement.

The pauper rented a farm for a year at 8 *l. per ann.* and at the same time jointly with *T. H.* took and entered upon another farm in the same liberty of another person for a year at 3 *l.* 15 *s. per ann.* At the time of taking this second farm it was agreed between the pauper and the said *T. H.* that *T. H.* should have and take one half of the corn and hay, to be cut from the said farm of 3 *l.* 15 *s.* rent, and that when *T. H.* should have taken away the said half of the corn and hay, the pauper should be possessed of and occupy the whole farm of 3 *l.* 15 *s.* rent, to the expiration of their year, paying to the said *T. H.* 4 *s.* for his share of the said farm. And the terms of this agreement were complied with; *per Cur.* This tenement thus rented by the pauper, in *Kniveton*, was under the yearly value of 10 *l.* The act of parliament fixes the yearly value at 10 *l.* and the value must be estimated by the rent, and always is taken to be according to the rent. Here the rent was 8 *l. per ann.* and the half at 3 *l.* 15 *s.* Indeed he was to pay *T. H.* 4 *s.* for the advantage, which he (the pauper) was to have after the crop was off; but an agreement of this sort between the two joint tenants cannot be considered as a rent.

Of the Hiring or Taking of the Tenement.

648. *Cranley and St. Mary Guilford, H.* 8 G. Str. 502.

The lessee of a mill agrees to let the pauper occupy the mill pay-

Upon a special order of sessions it was stated, that a certificate man agreed with lessee of a mill, that he should occupy

occupy the mill and pay 12 *l.* a-year, that there was no settlement. But under lease or assignment but in pursuance of the agreement, the certificate man occupied the mill two years, and paid the rent; the sessions adjudged it no settlement. But by the court, The order must be quashed: For if this be not an absolute lease for a year, (as *Eyre J.* said it was, the rent being reserved as rent for a year,) yet it is undoubtedly a lease at will, which is sufficient to gain a settlement.

649. *R. v. Inhabitants of Little Dean, T. 9 G. Str. 555.* If lease is by a deed, exception was taken that it might be only by parol, and being entirely void, a settlement could not be gained under it. *Per Cur.* Then it should have been stated to be by parol; we must take it to be by deed, otherwise it is no lease at all. Order confirmed. But see pl. 650.

650. *R. v. Duns Tew, T. 29 G. 2. 2 Burr. S. C. 398.* Lease at will is sufficient to gain a settlement. *R. Guffkins* the pauper, together with *John Goodwin*, his father-in-law, rented a bargain at 8 *l.* a-year as partners, at *Duns Tew*. In 1747, they being about to leave *Duns Tew*, *John Goodwin* alone went to *Mr. Keck's* agent at *Little Tew*, and took a farm of 52 *l.* a-year for four years. After the taking, and before the farm was entered upon, *Guffkins* inquired of *Goodwin*, whether he depended upon his going with him to *Little Tew* to which *Goodwin* replied that he did, for he could not go without him. They removed with their joint stock of 100 *l.* value, and resided upon and managed the farm together, for seven years. *Mr. Keck* gave his receipts for rent to *Goodwin* alone, and *Mr. Keck* being obliged to distrain, *Goodwin* alone gave a bill of sale, *Guffkins* then standing by without interposing. Just before the order of removal was made, *Guffkins* went off from the farm, and *Goodwin* took the whole stock, allowing 62 *l.* to *Guffkins* for his moiety. *Mr. J. Denison*, the seat of the Ch. J. being vacant, delivered the resolution of the court. That *Guffkins* gained a settlement in *Little Tew*, for being taken in partner by *Goodwin* he had an interest in the farm, at least as tenant at will to *Goodwin*, of the moiety of a farm of upward of 20 *l.* a-year. A tenancy at will is sufficient to gain a settlement (1 *Str. 502.*) where there was no underlease or assignment, but in pursuance of an agreement with the lessee the certificate man occupied the mill two years together and paid the rent; and it was holden, that if this was not an absolute lease for a year;

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as Mr. J. Eyre said it was, the rent being reserved as a rent for a year, yet it was undoubtedly a lease at will, which is sufficient to gain a settlement. Order was quashed.

For what Time the Tenement is to be taken,

Taking a tenement for less than a year is sufficient.

651. *R. v. Shenstone*, E. 32 G. 2. 2 Burr. S. C. 474. The pauper having gained a settlement at *Shenstone*, afterwards about fifteen years ago, took a house in *Gratwich* at 30 s. a-year which he has enjoyed ever since; and five years ago took two acres of land in the parish of *Bromley*, for the growing of potatoes, from *Candlemas* to *Michaelmas* for 9 l. and at the same time, and from the same person, took in the said parish of *Bromley* half an acre of land at 40 s. for the like term, and paid his rent for all the premises which were of the value aforesaid. Between *Midsummer* and *Michaelmas* he lodged above forty days in *Bromley* where the lands lay, for the convenience of digging up the potatoes. Lord *Mansfield*: It is agreed that if the taking be sufficient, it will be a settlement in the parish where the man resided. There has been a determination what shall be a taking for a year, and I have no doubt, but the statute 13 & 14 *Charles 2.* is complied with, and that he has gained a settlement in the parish where he resided. To which opinion the other three Judges concurring the order was quashed.

652. *R. v. Staunton under Bardon*, H. 6 G. 3. Burr. S. C. 558. The proprietor of a farm in *Ulescroft*, which was of the yearly value of 45 l. stocked it with his own cattle, and occupied it till the 29th of *May* 1763, when he let part of the said farm to the pauper till the *Ladyday* following for the rent of 26 guineas. The pauper was to pay half the poors levies, to be at half the charge of the repairs, have the manure then in the yard, and leave the same quantity at his quitting the premises, and he occupied the same accordingly. The Justices in sessions held this to be no settlement in *Ulescroft*. But their order was quashed; Mr. *Dunning*, who was to have shewn cause, giving it up as indefensible.

Pauper hires for five months at 4 l. a house worth 10 l. a year, and held to gain a settlement.

653. *R. v. Inhabitants of St. Matthew's Bethnall-green*, H. 7 G. 3. Burr. S. C. 574. *John Fell*, the husband of the pauper, hired a house for five months, for which he agreed to pay the sum of 4 l. and came and resided there with his family during the said five months. The house

at the time of hiring and entering upon the same, was worth 10 l. a-year. It was argued, that this could not gain a settlement. The *criterion*, which is the ability of the person to hire a tenement of 10 l. a-year value, fails in this case. For it doth not appear that this man had such a degree of credit as the statute requires, besides that, the proportion of 4 l. for five months falls short of 10 l. a-year by about eightpence a month. But by Lord Mansfield and the court: The rent is not material, but the value, and we are concluded from treating this tenement as under 10 l. a-year by the finding of the Justices, who have stated it as a fact, that at the time when he took it it was of the value of 10 l. a-year to let; and it was adjudged that hereby he gained a settlement.

Of the Place in which the Tenement is to be taken,

654. *R. v. Northnibley M. & G. MSS.* A man and his wife removed from the parish of *Northnibley* to *Wooton Under Edge*, and rented the *Red Lion* at 6 l. a-year from *Ladyday* to *Ladyday*: Then about the end of *May* following he took a meadow which was of the yearly value of 8 l. near to the same house in the said parish from that time to *Ladyday* at 5 l. 10 s. and about two months after the man ran away, but his wife and family continued there till they were removed to *Northnibley*, which order was confirmed at the sessions: on motion to quash these orders; it was said this was a renting of a tenement of 10 l. a-year, and sufficient to gain a settlement in *Wooton Under Edge*. Ch. J. I do not see why this should not gain a settlement, for he rented a house of 6 l. a-year, and land at 5 l. 10 s. a year, which does gain a settlement; and he might come again if you had not sent away his wife and family. Indeed had he taken the meadow but for a month, I think he had not gained a settlement, though he pays a rent proportionable to the whole year; for then it is not thought of ability, or sufficient to be trusted with it for a whole year. The other Judges said this was a renting of a tenement of 10 l. *per ann.* within the meaning of the statute, and that the settlement arose from the value of the lands and tenements that he rented, for by reason of that he was not likely to become chargeable. Both orders quashed. *Pears Sett.* 86. *Fol.* 79.

A. rents 6 l. a-year, and afterwards a meadow of the yearly value of 8 l. from the end of May to Michaelmas for 5 l. 10 s. in the same parish, and occupied both at the same time.

A. hires a tenement of the annual value of 13 l. 10 s. part of which of the yearly value of 7 l. 10 s. laid in the parish in which he resided, and the remainder in an adjoining parish.

655. *South Sidenham and Lamerton, T. 3 G. MSS. B.* died possessed of a small cottage in *South Sidenham* for a term of years, determinable on the death of her daughter and only child, who was married to one *Willis*; who on the death of *B.* entered in right of his wife, but did not take out letters of administration to *B.* but lived there and had two children: twenty-five years after he goes with his wife and children into the parish of *Lamerton*, and there hires a small messuage, and several closes for sixty years, if they so long live, at the full rent; which was 7 l. 10 s. in the said parish of *Lamerton*; but the order states further that the whole tenement or messuage was worth 13 l. 10 s. a-year; but part of it (*viz.*) 6 l. per ann. lay in the parish of *A.* and not in the parish of *Lamerton*; but the whole was one entire messuage. The order removes them to *South Sidenham*: It was argued that though *E.* the daughter had no title in law to the cottage of her mother, yet she had a title in equity, which is sufficient to make a settlement, and that hiring a messuage in *Lamerton* which is of the value of 7 l. 10 s. per ann. within the parish, does not gain a settlement within 13 & 14 Ch. 2. If a man take land of 8 l. per ann. in one parish, and land of 8 l. per ann. in another, it does not gain him a settlement in either parish. But per *Parker Ch. J.* As to the settlement in *South Sidenham*, if the other settlement is a good one the order must be quashed, because, though he has a right to live in both, yet he cannot be sent from one to the other. If a man hires a house at a small rent and pays a fine, yet if the house is worth 10 l. per ann. it makes a settlement; for the settlement depends on the value of the tenement, not of the rent; this house and land is worth above 10 l. a-year, and one entire messuage, but in two parishes. But there may be another consideration, where it is one entire tenement as this is, and where two different tenements; for the reason of the statute is this, that a man, who is entrusted with a tenement worth 10 l. a-year, is of such credit, and must have such a stock as makes him not likely to become chargeable to the parish, and therefore it would be very hard that a man who is of sufficiency enough to be trusted with a lease worth 13 l. a-year, should not gain a settlement by it. *Eyre J.* took it to be within the letter and intent of the law, that a man who is capable of renting a tenement of 10 l. a-year should be settled in that parish. *Pratt J.* The mischief recited by the statute, and intended to be prevented is vagrancy of poor persons, who used to come into

into parishes where there was the best stock, and the statute describes who are intended by those poor, (to wit) such persons as are not capable of hiring a tenement of 10 l. a-year. Now this man's sufficiency is not the less because 6 l. per ann. part of the tenement is in a different parish. So *per Cur.* The order must be quashed, his settlement being in *Lamerton*. Same resolution in the case of *Elsted and Hollibourne*, *M. 3 G. 2 Str. 849.* See *Str. 57. Fol. 81.*

656. *R. v. Sandwich*, *E. 8 & 9 G. 2. Burr. S. C. 44.* *John Payne* settled at *Sandwich* went to *Studland*, and took a house at 1 l. 10 s. per ann. and afterwards took lands in *Laughon* of 12 l. per ann. but lived in his house at *Studland*. The court held this to be a settlement at *Studland*; for if a person rents two tenements amounting to 10 l. in different parishes and under different takings, yet they make a settlement where the party lives, for though literally the statute may seem to require 10 l. per ann. in the parish where he resides, yet by a favourable construction it has been often held, that the being of ability to rent 10 l. a-year, tho' in different parishes, excludes a supposition, that the party is likely to become chargeable within 13 & 14 Ch. 2. And so are the cases of *North Nibley and Weston*, *M. 1 G. 1. South Sydenham v. Lamerton*, *T. 3 G. 1. R. v. Inhabitants of Hollingham*, *P. 3 G. 1.* And it is remarkable that in the case of *South Sydenham v. Lamerton*, the rent reserved was only 7 l. but the improved rent being worth 13 l. that was held to be a case within the statute, because of the stock and credit necessary to carry on such a farm. And so held in the present case. Note, the same case holding in certificates, and this is a sufficient renting of a tenement of 10 l. per ann. within 9 & 10 W. 3. c. 11. even though he lives in the parish where he has but 3 l. per ann. *Elsted v. Hollibourne*, *M. 3 G. 2.*

A. took a house at 11. 10s. a-year, and afterwards took lands in adjoining parishes.

Of the Occupation of the Tenements.

657. *R. v. Marden*, *M. 25 G. 2 Burr. S. C. 311.* The pauper hired a tenement, jointly with *J. S.* at *Marden* for a year at the rent of 16 l. it had been let before for 20 l. per ann. They jointly occupied the house, and held the land at their joint expence, and each paid an equal share of the rent; the sessions held his settlement to be at *Marden*. Lord Ch. J. *Lee*: Upon this order

Joint tenants occupy the tenement jointly, and till the land at a joint expence, and pay equal shares of the rent, which was under 20 l. a-year.

either the value of the tenement hired by the pauper, is to be taken, as 16 *l. per ann.* only, or else no value of it is stated at all. Mr. J. *Denison*: Suppose each is liable for the whole rent, yet whatever may be the case with regard to the remedy against the occupiers of such land, so jointly taken, yet this act of parliament considers only the right which clearly is only to one half. Mr. J. *Foster* concurred, and it was observed that the Judges upon the northern circuit had given the same opinion in the case of *Croft and Gainford*. Order quashed.

558. *R. v. Llandverras, M. 7 G. 3. 2 Burr. S. C. 571.* *Evan Hughes* being settled at N. rented a tenement of 10 *l. per ann.* value in *Llandverras*, and paid the rent to the landlord, and resided above forty days on a part of the tenement of the yearly value of forty shillings only, and immediately after his taking the tenement, let all the rest and residue of it to his undertenants, without residing thereupon at all himself. The sessions held this a settlement in *Llandverras*: objection was made to this order, that the mere taking a tenement without occupying the value of 10 *l. per ann.* is not sufficient to gain a settlement; otherwise several poor families might be introduced into a parish, upon one such taking. Lord *Mansfield* was of the contrary opinion, That if it be a *bona fide* taking, he may underlet it as he pleases. That fraud or collusion may be found, but not presumed. Mr. J. *Yates*. It has been determined upon a case from the northern circuit, where two persons jointly rented a tenement of 17 *l. a-year*, that they neither of them gained a settlement, because neither of them singly might have credit to rent 10 *l. a-year*, but this *E. Hughes* had such credit. There must be a residence of forty days in the parish, but the tenant may let part of the tenement if he thinks proper. Mr. J. *Aston* concurred that he must reside in the parish, and not necessary that he should reside upon any part of the premises. The undertenants do not take a tenement of the yearly value of 10 *l.* and therefore do not gain a settlement. Mr. J. *Hewitt* concurred entirely. And the order of sessions was affirmed.

A. rents a tenement of 10 *l. a-year* value, and paid the rent. He resided upon a part worth 40s. a-year, but immediately after taking the tenement let all the residue to under tenants.

Of the Residence upon the Tenement.

See pl. 658. 659. *Case of Stapleford, E. 4 G. 2. 3 Str. 849.* A person took 3 *l. a-year* in the place he was certificated to, and

40 *l.*

40 l. in the next parish, but lived where the part of the value of 3 l. was, and it was held a settlement there.

660. *R. v. Bowling*, E. 15 G. 2. Burr. S. C. 177. Pauper served six years as an apprentice to one *Marsden* who came with certificate to *Bowling*, but rented and lived in a tenement of 9 l. per ann. at *Bowling* aforesaid, and also rented 1 l. 15 s. in another township, and the question was if this was such a renting as is required by 9 & 10 W. 3. *Per Cur.* The statute of 9 & 10 W. 3. ought to receive the same construction as 13 & 14 Ca. 2. by which act a pauper is removeable from a tenement under 10 l. per ann. and it has been held that different tenements, and different rentings are sufficient, as in the case of *South Sidenham* and *Lamerton*; so upon this act the renting of 10 l. per ann. is not necessary to be all in the same parish. The words are renting a tenement of 10 l. per ann. or executing such annual office in such parish; which words in "such parish" are only relative to executing such annual office, and not to the occupying of 10 l. per ann. and the reason is the presumption that he is not likely to become chargeable if he is of a sufficient substance to rent 10 l. per ann. Executing an annual office is in 3 & 4 W. & M. substituted instead of notice, and so must be in the parish; but that is no reason that renting the 10 l. per ann. must be all in the same parish. In the cases of *R. v. Hollibourne*, and *R. v. Sandwick*, M. 3 G. 2. a person rented a tenement of 10 l. per ann. part in one parish and 3 l. 10 s. of it in another, he lived in the last parish, and it was held that he gained a settlement there. Good settlement at *Bowling*.

661. *R. v. Leeds*, E. 4 G. 3. 2 Burr. 524. J. *Howe* took a tenement of 10 l. per ann. at *Blackfordby* in June 1761, and was to leave it at *Michaelmas* or *Ladyday*, but it was not mentioned at what *Michaelmas* or *Ladyday*. At *Michaelmas* 1761 he went to *Blackfordby*, and resided upon it about three months. He afterwards took two tenements of 15 l. per ann. and 5 l. per ann. at *Leeds*. His wife and children resided wholly at *Blackfordby*, and never came to *Leeds*, where he generally resided, but was sometimes at *Blackfordby*. He was afterwards five months altogether at *Leeds*, and then twenty-seven days together at *Blackfordby*. His wife and children being likely to become chargeable to B. Two Justices removed them to *Leeds*, and the session confirm the order. But *per Cur.* They must both be quashed. For J. *Howe* could not have been removed himself from his tenement while

A. rents 9 l. a-year at B. where he resided, and 1 l. 15 s. a-year in another township.

Settlement by renting, &c.

while his interest there subsisted, and his wife and family could not be removed from him.

What shall be a Dissolution of and what a coexisting Contract for a Tenement.

662. *R. v. Dilwyn*, T. 8 & 9 G. 2. Burr. S. C. 54. The pauper, about two years before the order of removal, agreed for a farm in the parish of *Eardisland*, to hold from *Candlemas* at 44*l.* yearly rent; in the month of *April* following he sowed fifteen acres of the land with grain, and in *May* following he came to live on the said farm, and inhabited there about three weeks, and then the greatest part of his stock of cattle was seized and driven away, for rent due to his former landlord; whereupon he came to a new agreement with his new landlord, and agreed to quit the said farm, and to pay to the landlord 8*l.* for satisfaction, and to continue at the farm-house, and to have a small piece of pasture with it, at the rent of 3*l.* 10*s.* to be paid at the *Candlemas* following. At the harvest following this agreement, his landlord seized upon the fifteen acres of grain. The pauper then about *Michaelmas* rented a house, and the aftermath of a meadow in *Dilwyn*, to hold from that time to the *May* following at 5*l.* for the house, and 15*s.* for the grass of the meadow. He paid no taxes. Lord *Hardwicke*: There is not an inhabitancy of forty days in *Eardisland*, under the lease of 44*l.* per ann. and therefore a settlement cannot be gained under it. And the next agreement with his landlord in *Eardisland*, is quite a separate contract, and cannot be tacked to the former. It did not take effect till the former was finished. The pauper is settled neither at *Dilwyn*, nor *Eardisland*.

663. *Case of the parishes of Bostock and Lestwick*, 1736, MSS. John *Pistock* was settled at *Bostock*, and afterwards rented a tenement of 8*l.* 15*s.* from Mr. *Hewitt* in *Lestwick* for a year, and in the same year on or before the 25th of *March* took a meadow at 2*l.* 1*s.* from one *Beardman*, to hold till *Candlemas* then next, and to have the whole year's profits; it being the custom there for that meadow not to be pastured from *Candlemas* till *May*; and he removed to the said tenement the 14th of *May* to reside there, and about a fortnight or three weeks after finding himself incapable to manage the farm, he told *James Rogerfon* his stock was not sufficient for the said lands,

lands, and desired *James Rogerson* that he would take part of *Hewitt's* land in *Lestwick* aforesaid, which he agreed to do at 6*l.* 10*s.* and *Rogerson* was to pay the rent to *Mr. Hewitt*. About three weeks afterwards, this came to the ears of *Mr. Hewitt*, and he sent for *Rogerson*, and told him he looked upon him as tenant, and expected the rent from him: *Rogerson* agreed to it, and paid the rent accordingly; but never paid or accounted with *Pissock*, and hath held the same ever since upon the same agreement; and the question laid before *Verney*, then Ch. J. of *Chester*, was whether, upon the above facts *Pissock* gained any settlement in *Lestwick* or not; and he was of opinion that he did not gain a settlement in *Lestwick*.

664. *R. v. Inhabitants of St. Lawrence in Winchester*, E. 8 G. 3. 2 Burr. S. C. 588. Two Justices made an order for the removal of *Mary Gradige*, widow, and *Mary* her daughter from the parish of *St. Maurice* to that of *St. Lawrence*, both in *Winchester*, which was confirmed upon appeal to the sessions. Upon whose order it was stated that *Charles Goulding* a parishioner, and paying to the church and poor in the parish of *St. Lawrence*, being sworn on the part of the parish of *St. Maurice*, and refusing to be examined; and it being urged that he ought not to be compelled to give evidence which might tend to charge his own parish, the court of sessions over-ruled the objection. Whereupon *Goulding* proved that *Richard Gradige*, the late husband of the said *Mary Gradige*, was hired by him at *Michaelmas* 1764, being then unmarried and having no child, and served till the *Michaelmas* following in the parish of *St. Lawrence*. Afterwards the said *R. G.* rented a tenement in *Hursley*, at 3*l.* 10*s.* per ann. for a year from *Ladyday* 1766, but after residing in it about six weeks quitted it, and tendered the key to the landlord who refused to accept it. *Gradige*, before *Midsummer-day* then next ensuing left it with a neighbour, for his landlord to take when he should think proper. On the said *Midsummer-day*, *Gradige* took a tenement in the parish of *St. Maurice* for a year at the rent of 9*l.* per ann. and on the same day entered upon it, and resided above forty days, thereon, before the landlord of the tenement in *Hursley* received the key of his tenement, which he did on the sixteenth of *August* following; and then the said landlord let the tenement in *Hursley* to one *J. T.* before *Michaelmas* 1766, who was to enter into possession on the said *Michaelmas-day*. Lord *Mansfield* declared his opinion, That it was scandalous to make the objection

objection to the competency of the witness *Goulding*, that in cases of this kind it was reasonable that the truth of the facts should be fairly and candidly examined into, that the contract for a year in *Hursley* was not, nor could be dissolved, as the landlord refused to accept the key till the middle of *August*, which was subsequent to the hiring the second tenement. Mr. *J. Yates*: As to the competency of the witness, his evidence was against his interest, not for it. The former contract for the tenement at *Hursley* was not at an end before he had lived forty days in the other. The landlord might have brought his action for the rent. Mr. *J. Aston* and *Willes* agreed. And both orders were quashed.

Interest of Executors and Administrators.

Where a person has a right as executor, the value is totally immaterial,

665. *R. v. Uttoxeter*, T. 5 G. 3. 2 Burr. S. C. 538. *W. Gilbert* was legally settled at *Uttoxeter*, his mother entered and resided upon a farm of 22 l. per ann. at *Marchington*, which she devised by her last will to her five children, and made the said *William Gilbert* and her three other sons executors. He alone proved the will, and entered as her executor, and managed and resided upon the farm for about three months. He afterwards returned to *Uttoxeter*, but continued to go over to *Marchington* occasionally, and had a servant upon the farm, till the *Ladyday* following. He possessed all his mother's personal estate, and paid the arrears of rent due in her lifetime, and the year's rent ending at *Ladyday* 1758, and received a receipt for 44 l. in full of all arrears of rents, and the rent to become due to *Ladyday* next and was offered to hold the farm after *Ladyday* 1758, if he would not insist on repairs; which terms he did not chuse to accept. Lord *Mansfield* was absent, and Mr. *J. Wilkes* said, here he has a right as executor; the value thereof is totally immaterial, because by common law no man can be removed from their own, and one who has a right to reside irremovably does thereby gain a settlement if he resides forty days. Mr. *J. Yates*: If an interest of ever so little value devolves upon a person by act of law, it is not within the provision, purview or intent of the statute 13 & 14 Ed. 2. Mr. *J. Aston* expressed himself to the like effect, and cited the case of *R. v. Sundridge*. Order quashed.

CHAP. XIX.

Of Settlement by a Person's own Estate.

Of the Value of the Estate, *pl.* 666.—What shall be a Purchase by Act of Law, *pl.* 673.—Of the Residence necessary, see *pl.* 683.—Of the Interest of Executors and Administrators, *pl.* 687.

See the 13 & 14 *Car.* 2. *c.* 12. and 9 & 10 *W.* 3. *c.* 11. and 9 *G.* *c.* 7.

666. *CASE* of the parishes of *St. Paul's Walden* and *Kempston, E.* 13 *G.* *Fol.* 238. *A.* purchased a copyhold tenement in *St. Paul's Walden*, the purchase money for which, with the fine and fees paid to the court, amounted to 30 *l.* and it appeared by the order of sessions, that the officers of the parish of *Kempston* had given him 40 *s.* towards paying his fine and fees. Therefore it was insisted that this was fraudulent, and not a good purchase within the statute, sufficient to gain a settlement. By the court: We cannot take notice of its being fraudulent, unless the Justices had adjudged it so. The order of sessions must be confirmed.

667. *R. v. Sabridgeworth; H.* 3 *G.* 2. *MSS.* Edward *A.* surrendered a copyhold of 2 *ss.* 8-year to his son, who afterwards sold it, and was held to gain no settlement. See the next Pl.

Lee moved to quash this order, because a voluntary gift to the son. *Sed per Cur.* This is a purchase, though the party paid no money for it. Every estate not acquired by descent is in law a purchase, and the same construction must be made upon this act, and the party cannot hope to be in a better condition, because he pays no money for the land. Order confirmed.

668. *R. v. Parish of St. Mary, Whitechapel. T.* 8 & 9 *G.* 2. *Burr.* S. C. 55. The pauper had a leasehold of 5 *l.*

5 l. *per ann.* value at *Mile-End* for the term of fifty years, at sixpence *per ann.* reserved rent. He lived upon it twenty-five years, and then sold the remainder of his term for 32 l. The case of *R. v. Sabridgeworth*, was cited to prove that the pauper did not gain a settlement, which case was thus stated: "E. S. the pauper was born at *Sabridgeworth*, and his father being seised in fee of " a copyhold cottage at *Albury*, which he used to let " at twenty-five shillings a-year, about a year and a " half before the order of removal surrendered the said " cottage to his son the pauper, and his heirs, who was " admitted to the same during the life of his father: " immediately upon his admission, he went into, and " dwelt in the said cottage about a year and a half, " and then sold the same for fourteen pounds, being the " full value thereof; upon which case the court of *B. R.* " thought the surrender looked fraudulent, and took " notice, that the surrender was since the 9 G. 1. which " fixes the purchase-money at thirty pounds; the intent " of which act they held to be, that the purchaser should " be a person able to pay so much." But Lord *Hardwicke* thought this case of *Sabridgeworth* not at all to the purpose, because the surrender being there made after 9 G. 1. and the value being under thirty pounds, it was directly within the act; but that the pauper in the present case gained a settlement in *Mile-End*, and that the selling the leasehold made no difference.

A. bought a tenement for 39 l. of which he paid 9 l. himself and the rest was paid by B. by his order. A. mortgaged it to B. within a month after the conveyance was made, but continued in possession above four years, then B. entered by virtue of the mortgage and release of the equity of redemption.

669. *R. v. Tedford*, T. 8 & 9 G. 2. *Burr. S. C.* 57. *Francis Gill* being settled at *Tedford*, purchased a house and curtilage in *Waddingham* for 39 l. *Gill* paid 9 l. and *Isaac Bristol* paid the remaining 30 l. by *Gill's* order. The premises were conveyed to *Gill* and his heirs. About a month after the execution of the conveyance *Gill* mortgaged the premises to the said *Bristol*, but continued in possession four years after the mortgage. Then *Bristol* entered by virtue of the mortgage, and a release of the equity of redemption. The inhabitants of *Waddingham* then procured *Gill*, he being out of possession, to be removed to *Tedford*. This was the case stated by the sessions, and referred to the Judges of assize. Afterward the sessions made an order reciting, that whereas the Judges of assize hath not time to hear and determine the matter, and whereas the parties agreed this to be the true state of the case; therefore, upon hearing counsel and further evidence on both sides, this court doth adjudge, that the purchase by *Gill* was fraudulent, and that his

his settlement is at *Tedford*, but that the parishioners of *Tedford*, are no ways concerned in the said fraud. Lord *Hardwicke*: The state of the case made for the judge of assize, was before agreed between the parties to be the true state of it; the further evidence therefore must have been evidence of the same facts. Two questions arise upon this case. First, whether this be a case within the statute 9 G. 1. c. 7. Secondly, If it be not, whether this purchase so far appears to be a fraud, as that the Justices had authority, without any aid from this act of parliament to adjudge it fraudulent. That statute seems confined to purchases under 30*l.* *bona fide* paid. Consequently if the vender had such consideration of 30*l.* *bona fide* paid to him, it is not within the act. Now the consideration was 39*l.* and *bona fide* paid. It would be pretty hard to say, that the Justices had a power under this act to inquire, whether the purchaser borrowed the money or not. It is a common case to borrow money to make purchases: Nothing is more frequent than to borrow a sum to make up the price. Secondly, I think that, without the aid of this act, the Justices have authority to consider this as a fraudulent colourable purchase, as well as in the case of gaining a settlement by renting 10*l.* a-year, provided that the fraud sufficiently appears; for the fraud infects the whole, and makes it no purchase. But then the question is whether the fraud sufficiently appears. It was said that the Justices are the proper judges of fraud. But fraud is a fact which must be found, it must be so by a jury upon a special verdict; for it is not sufficient in that case to find premisses only without drawing a conclusion. The Justices are judges of the facts, and there they may judge of the fraud arising from the facts; But we are judges of the law upon the facts, though not of the facts themselves. If they had generally found the fraud, we might have been bound by such general finding; but when they state the facts particularly, the matter is as much open for our determination upon it, as it was for theirs. Here the facts are particularly stated, so that we can determine upon them as well as they could. The residence of four years in the house is a very material circumstance. It has been said that there might be other facts upon which the Justices might adjudge the fraud, because the adjudication is said to have been upon hearing further evidence; which if to be understood to be evidence of other new facts, would prevent us from controlling their determination; but it is much more natural to suppose the further evidence to have been of the same facts; because the facts were

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were before agreed. The Justices are only to consider of frauds with regard to the parish (in order to gain a settlement in it), they are not to inquire concerning fraud between the parties. Mr. Justice *Page*: In the case of the parish of *St. Giles* at *Cambridge* in which I was counsel) the pauper bought a cottage there, and came thither to settle, and being removed from thence by an order of Justices, he brought an action of assault and battery for removing him. It was insisted that an action would not lie, because it was a fraudulent purchase, and therefore no settlement. It appeared that the man was not worth 1 s. but had borrowed the whole purchase-money. *Holt Ch. J.* held that the Justices had a right to inquire into purchases, and to remove if they found them fraudulent; and the plaintiff was nonsuited. Yet the seller was no party to the fraud. I must take the Justices to have stated all the facts; otherwise it could not be the true state of the case, which it is agreed to be. If the Justices had not stated the case, we should not have looked into it: But where the facts appear to us we are to judge of the fraud. I do not see that this amounts to a fraud. Mr. *J. Lee*: If this state of the case contains the whole of the facts, then the adjudication of the sessions signifies nothing, if we are of opinion that the facts are not sufficient to warrant their conclusions: We are to draw a conclusion from the facts, when they are fully before us. Mr. *J. Probyn* doubted with regard to the meaning of the words *further evidence*: But both the orders were after consideration quashed.

A. was mortgagee of a tenement upon lives, which was appraised at 25 l. but he was afterwards offered 30 l. for it.

670. *R. v. Stockland*, *H. 15 G. 2. Burr. S. C. 169.* *J. S.* being possessed of a tenement in *Colleigh*, for the residue of a term of years determinable on three lives, which cost 40 l. mortgaged the premises to the pauper, redeemable on payment of 15 l. with interest on a day which was past before the death of the mortgagor, who died intestate, and at the time of his death one of such lives was gone, and the 15 l. was not paid, and 30 s. also was due to the pauper for interest, and 18 l. 10 s. more on bond and simple contract. Upon the mortgagor's death with the consent of the widow, he took out administration as principal creditor, entered and was possessed, and so continued till removed by order of Justices. The premises were appraised when he entered at 25 l. but he was afterwards offered 30 l. for them. The term was at an end before he was removed. In support of the order of sessions it was insisted, that the simple contract debt

debt cannot be taken in as part of the purchase-money, *bona fide* paid on a purchase, which was even appraised at no more than 25 *l.* and is not stated to have been worth 30 *l.* On the other hand it was urged by the counsel, that the value appeared to be at least 30 *l.* that he was offered 30 *l.* for it; that a thing is worth what it will fetch, and that appraisements are always under the true value; but however as he came to it under a legal title as administrator, and resided forty days upon it irremovable, he gained a settlement. *Per Cur.* The consideration he has *bona fide* paid, exceeds the sum of 30 *l.* and he remained upon the estate irremovable forty days. It is clearly within the words of the act; therefore the orders ought to be quashed.

671. *R. v. Salford, H. 4 G. 3. Burr. S. C. 516.* A. purchases a tenement under Peter White, the father of the pauper, being settled in tenement under Over-Norton, in the year 1726, for the consideration of 30 *l.* in B. his son 29 *l.* purchased a tenement in the parish of Salford, of marrying leaves B. and lives in one John Lardner, whose wife was seised in fee of the another parish. He is removed to B. during his father's life. But the order is quashed. The said Peter lived in the tenement so purchased ever since the time of the purchase, which was for the space of 36 years, and was still living there at time of the removal. His son the pauper was born there, and lived with his father till he married; and then left his father's family about eight years ago, and lived in a separate tenement in Salford aforesaid, but never gained any settlement, but what he derived from his father. The two Justices removed him to the hamlet of Over-Norton; and the sessions quashed that order. And in support of the order of sessions it was urged, that here was a derivative settlement of the son at Salford, and he must be sent to that place; which was the place of his father's settlement, at the time of the son's removal. Before this statute; any purchase would have made a settlement, and this is a settlement to the father whilst he inhabits on the estate; and the son's derivative settlement must be the same place, as his father was irremovable from it at the time when the son was born; the father's settlement at Over-Norton may indeed possibly revive, if he quits his estate at Salford: But it doth not appear that he ever will quit it, and Salford is his present settlement. He cannot have two at once; nor can he be removed from his own against his will; and the son could have no settlement at Over-Norton, for the father never had any there since the son was born. On the

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other hand, it was argued, that the father's settlement is at *Over-Norton*, and is only suspended during his inhabitation upon the purchase of *Salford*; and if the son leaves his father and gains no settlement for himself, he must be sent to the place which was the father's settlement at the time when the son left him, the son is become emancipated from the father; and the father himself is liable to be removed, as soon as he leaves the very spot which he purchased. Lord *Mansfield* delivered the resolution of the court: The question is, whether the pauper ought to have remained in the parish of *Salford*, or have been removed from thence to the hamlet of *Over-Norton*, as his last legal settlement. And we are of opinion, that no settlement of the father was gained in *Salford* by the purchase, but only during the time of his inhabiting in the purchased premises: And this would have been equally the case, if the act had never been made; for he could not have been removed from his own estate, though he had no settlement in the parish where it lay; so that the father's settlement (if it may be so called) in *Salford* was only temporary, and did not extinguish his settlement at *Over-Norton*. And the only settlement which the son could derive from his father was at *Over-Norton*, for there could be no derivative settlement from the father at *Salford*, the father himself having no settlement there, but being only irremovable from his own estate. And this may be illustrated by a supposition, that the son had not resided in *Salford*, but had gone to live in a third parish, and had there been likely to become chargeable; and the question had arisen, whether he ought to be removed to *Salford*, or *Over-Norton*. He could not possibly in such a case have been removed to *Salford*; because such removal would have been conclusive upon *Salford*, and he would remain settled there for ever: Consequently he must have been removed to *Over-Norton*: Which shews that he was not settled at *Salford* by virtue of the father's purchase, even during the time of his father's residence upon it. And the order of the sessions was quashed; and the original order affirmed.

A tenement was purchased for 19l. and 15l. were afterwards laid out upon it.

672. *R. v. Dunchurch*, H. 6 G. 3. 2 Burr. 553. *Edward Tansur* was duly certificated from *Dunchurch* to *South Kilworth*. It appeared upon appeal by the parol evidence of the pauper and her son only, that about twenty-five years since, she and her husband the said *Edward Tansur* were joint purchasers of a tenement at *South Kilworth*, at the price of 19l. and upwards; that

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he laid out 15*l.* more to put it in repair, and built a new shop, and was taxed at the rate of a tenement of 30*l.* value for the first two years after he bought it, and resided in the premises till his death. Some years afterwards his widow the pauper sold part of the premises for about 20*l.* and gave to her son *Walter* another part. It appeared by indenture of *feoffment*, dated the 8th November 1763, and produced and proved, that the pauper in consideration of natural love and affection, and 10*l.* granted the residue to the uses following: Part of the premises to the use of the pauper for life, *sans waste*, remainder to her son *Edward* in fee, the undisposed residue of the premises to *Edward* in fee, who covenanted to keep the whole in repair. It also appeared by parol evidence, that the pauper continued to dwell in that part of the premises limited to her for life, till she applied to the parish officers for relief, that then she went to her daughter's house which is in the same parish, and let her own house to her son for sixpence, and was relieved at her daughter's house by the parish for about a week, and then was removed by order of Justices to *Dunchurch*, which was confirmed at the sessions. The propriety of receiving the parol evidence of the purchase was agitated, but the court paid no attention to the arguments on either side; and Lord *Mansfield* said the whole question is whether this woman was a *bona fide* purchaser of an estate of 30*l.* value; she cannot be presumed to come to it by descent or executorship, because the contrary appears. The case of *R. v. Benjoe*, *Foley* 255. and *S. C.* vol. 2. 139. that the purchase-money being 25*l.* and being made up, by money afterwards laid out, 30*l.* gained a settlement was never determined, and therefore is no authority. The act of 9 *G.* 1. draws the line according to the purchase-money; the letting in any thing subsequent would overturn the whole act, which takes the value of the purchase from the purchase-money actually paid. Mr. *J. Wilmot*: The husband and wife appear to have purchased jointly, and by *entirety*; no money afterwards laid out can make the prior purchase to be of greater value than it really was at the time of making it. She became an object of removal as soon as she let this to her son; therefore this case is not like that of *Snuton*, *Burr.* 120. where the man all along resided at a publick-house. Mr. *J. Yates*: The act is as clear as possible, that it must be a purchase of 30*l.* value at the time of the purchase; and as the statute has made this

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the criterion, we have no authority, nor is there any reason to depart from it. Upon Mr. J. *Aston's* concurrence the orders were affirmed.

What shall be a Purchase by Act of Law.

673. *H. 9 Ann. Vin. Ab. Rem.* 458. If an estate falls to a poor man, the Justices cannot send him to the place where his estate is, for he may let the estate if he will. But if he goes to the estate, and stays there forty days, he cannot be sent from it. See statute 13 & 14 Ch. 2.

674. *R. v. Grandborough, T. 4 G. Stra.* 97. *John Chappell* before his marriage with *Susannah* his wife was settled at *Grandborough*. Sir J. S. by indenture in 1667 granted to R. E. his executors, &c. a cottage at *Murphy* of the yearly value of 30 s. for ninety-nine years at 1 s. rent. In 1689 R. E. assigned it to G. in trust for *Mary* his wife for life; then to *W. E.* his son for the residue of the term; who all died, and then *Susannah* the wife of *W. E.* became intitled to the term as administratrix, and in 1709, in consideration of 15 s. devised to N. E. the same cottage, except one bay of building for an habitation for herself, for twenty-four years at a pepper-corn rent. She lived in the part of the premises so reserved, and married the said *John Chappell*. *Per Cur.* This is not taking a tenement under 10 l. *per ann.* for the 1 s. is not reserved as a rent; but only as an acknowledgment usually paid upon long leases. The case of a coehold is stronger than this, for that is an estate at will. Order qualified.

Uninterrupted possession of a cottage for thirty years.

675. *R. v. Wyley, M. 11 Stra.* 608. *H. C.* built a cottage upon the waste in *Wyley* belonging to the Earl of *Pembroke*, about thirty years since, and lived upon it to his death, about three years since, when it descended to his daughter *Elizabeth*, then married to *J. D.* they entered upon and enjoyed it for three quarters of a year, and then sold the possession to *John Wyvil*, who has enjoyed it ever since without molestation from the Lord; but no original grant appears. This the sessions held a good settlement of *J. D.* and his wife. *Per Cur.* The order must be confirmed. He lived forty days in the capacity of a person irremovable, which is a settlement of itself. This man had a title against the whole world, unless against the lord; and that may be doubtful after so long possession as thirty years. In ejectment he might either make or defend a title by thirty years possession. In this

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this case there is no colour to determine against his right, when the lord does not think fit to impeach it, and if he did, the title must be determined upon an ejectment, not an order of removal.

676. *R. v. Sundrith*, T. 7 & 8 G. 2. *Burr. S. C. 7.* Devise to A. for Sessions state this case: T. P. devised in 1701, to T. G. ninety-nine years father of the pauper, a tenement in *Hever* for ninety-nine years at 5s. *per ann.* which was the full, and most im- who devised it proved rack rent for any thing that appeared to the and all his real contrary. T. G. devised the same, and all the rest of state to the pa- his estate real and personal to the pauper, upon condition per, upon condi- that he should pay to or secure to be paid to his mother 20l. tional to pay 20l. towards her maintenance if she should live to expend A. to the widow of that sum, and made the pauper sole executor who proved the will and entered, and lived upon the premises until the time of making the original order. It did not appear that he had paid, or secured to be paid, the said sum of 20l. or any part thereof to his mother, she dying in a very short time after his father. *Per Cur.* This is not such a manner of coming to settle in a parish as the 13 & 14 *Ca. 2.* intended to prevent, because he came to it by precedent right and title, not as a wanderer or with a bad design, consequently the value of it is immaterial, as well as it is in freeholds and copyholds, from which the owner cannot be removed.

677. *R. v. Hasfield*, E. 13 G. 2. 2 *Str. 1131.* A. had A. being tenant by the an estate in her own right of 4l. *per annum* in *Furley*, where she and her husband lived till her death, when the courtesy of an he became tenant by the curtesy, and took a tenement of estate in B. took a farm at C. 30l. *per annum* in *Hasfield*, and lived one year there and died there. with his two children, whom he had by his said wife, and His children were then removed from B. to then died; the children being found with their grandmother at *Furley*, were both removed to *Hasfield*: One C. of them a boy, being at that time eight, and the other a girl, being six years of age, which order was confirmed at the sessions. *Per Cur.* The boy is tenant in fee of the estate of 4l. *per annum*; and though it is not stated that he was actually upon the spot, it is sufficient, that he had such an estate in the parish of *Furley*, from which he cannot be removed. As to the daughter it is otherwise, she can demand no maintenance, out of her brother's estate, and it was never yet determined, that children shall go to a grandmother for nurture; she may indeed be charged to contribute, if able, to their relief in the parish where they are settled. Order confirmed, as to the girl. 1 *Burr. 147.*

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Grant to a daughter by father without payment of any consideration.

See pl. 680.

678. *R. v. Marwood*, H. 29 G. 2. Burr. S. C. 386.

A man granted to his daughter, out of natural love and affection, for her life; and afterwards in trust for her daughter, all his interest in a cottage, which he held for the residue of a term of 99 years, determinable then on the death of one J. S. and for which term 20 s. was the original consideration money: He excepted out of this grant the standing of a bed in one room, and a way to and from the room; she and her husband entered and lived upon it until the lease determined by the death of the said J. S. Lord Ch. J. *Ryder*: If the husband had paid a consideration he would have been a purchaser; notwithstanding the conveyance was made to his wife: But in the present case, the husband is not a purchaser within the meaning of the act, 9 G. 1. and consequently gained a settlement by inhabiting forty days upon it. The three other Judges concurred; and Mr. J. *Wilmot* observed that on the contrary construction, no devise or gift, or marriage-settlement would gain a settlement, unless a pecuniary consideration was paid.

A. single woman purchased a tenement for 6l. afterwards her husband and she inhabited upon the premises for sixteen years, and after his death she sold them.

679. *R. v. Ilmington*, T. 6 G. 3. 2 Burr. S. C. 566.

Elizabeth Stanley in the year 1724, being then a single woman, purchased a leasehold tenement in the parish of *Mickleton*, for the remainder of a term of 1000 years, for which she paid six pounds; she resided for nine years thereupon, before her marriage with *Theophilus Evans*, and after their marriage they both resided there for 16 years, when *T. Evans* died, and she resided there till the year 1765, when she sold the premises for six pounds, and was afterwards removed to *Ilmington*, the place of her husband's settlement before his marriage, and the sessions confirmed the order. In support of the order of sessions, the act 9 G. 1. c. 7. s. 5. was cited, and it was insisted that this purchase was elusive of that statute. Mr. *Selwyn* on the other hand observed, that here was no fraud, that here was a residence of forty-two years, that in cases of descent a settlement is gained, though the original purchase be under thirty pounds value. The reason given in the case of *R. v. Marwood* will hold in this case: And Lord *Mansfield* in the case of *R. v. Uffculm* reasons to the like effect; and it appears from both those resolutions, that there is a difference between an actual purchase, and a legal purchase (in the technical sense of the word): The wife's estate upon marriage vested in *Evans*, who gained a settlement by forty days residence upon it, and his settlement communicated itself to his wife. Lord

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Mansfield declared himself of opinion with *Mr. Selwyn*, both for his reasons, and upon his authorities: to which the other Judges assented, and both orders were quashed.

680. *R. v. Ingleton*, E. 6 G. 3. 2 Burr. S. C. 560. *Richard Speddy* and *Rose* his wife resided under a certificate at *Astwick*, and the father of the said *Rose* conveyed to her, in consideration of natural love and affection, a customary cottage at *Astwick*, to the use of herself for life, and after her decease to the use of *Jane* her daughter, and her heirs. The said *Richard* and *Rose* his wife entered upon and continued in possession of the cottage for sixteen years: And then purchased of their daughter *Jane* her remainder in fee of the premises for five pounds, and afterwards sold the whole for twenty guineas; afterwards the said *Richard Speddy* and *Rose* his wife becoming actually chargeable, were removed by order of two Justices to *Ingleton*, which gave the certificate; and the sessions being of opinion, that the said *Richard* and his wife gained no settlement in *Astwick*, confirmed that order: It was moved to quash these orders. And on shewing cause, they were given up by the counsel as indefensible on the authority of the case of *Marwood*; this being a voluntary settlement, and not a purchase within the intent of the statute. *Burrow's Settlement Cas.* 560. See pl. 673.

681. *R. v. Bitton*, M. 8. G. 3. *George Bateman* the pauper, being legally settled in *Bitton*, built a cottage at his own expence in the waste in *Oldland*, in the manor of *Mrs. Archer*: The pauper lived therein for nineteen years and a half without interruption, but never paid any taxes, nor was ever rated for the cottage, or took any lease of the ground on which the said cottage was built, from the lady of the manor; or had any leave or licence to erect the said cottage. That twenty years ago, the said *Bateman* was turned out of possession of the said cottage by ejection, brought by a person claiming under a mortgage made by *Bateman*, for the sum of 16*l.* and some time after that, which was more than twenty years ago, the said mortgagee *Bateman*, sold the cottage to one *Williams* for 28*l.* and *Bateman* had 5*l.* part of the purchase-money. Mr. Solicitor Gen. argued, That this was no settlement in *Bitton*, because the pauper had not a possession long enough to gain a title; and it was the same as if he had purchased the estate, paying less than 30*l.* for it, for if he could not have gained a settlement originally by purchase, which he could not, because he did not pay 30*l.* for it, nor come in by the act or law, he

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surely ought not by being guilty of a fraud or theft, for so he came into possession ; and this case is not like that of *Alshbottle and Wyley*, Str. 608, for there was a title gained by a possession of 30 years, and the person whose settlement was litigated came to it by descent after the death of her father, and that case was before the stat. of 9 G. 1. at which time a man gained a settlement by residing upon his own estate, however he became possessed of it or of whatever value it was : But the court, without hearing the other side said, That it seemed from the state of the case, that this was a possession of thirty-nine years and a half, for it did not appear when the pauper was out of possession, which it ought to have done, as the pauper was otherwise to be taken as the person last in possession, and they thought the possession sufficient to gain a settlement.

682. *R. v. Garway*, M. 9 G. 3. The pauper *John Prichard* was born in the parish of *Kelpock* in the county of *Hereford*: He afterwards lived in the said parish of *Garway* about four years, and rented a tenement of 8 l. a-year, and was rated and paid to the parish taxes in the said parish of *Garway*, during the time he lived there : About 35 or 36 years ago, he went and lived with his father in a cottage, built upon the waste in the said parish of *Arcop*, where his father had then been about thirty years : That as long as the pauper remembers, which is about seventy years, a house stood upon the same spot, and the land belonging to it inclosed : That soon after the pauper went to live with his father, his father died, and the pauper continued in possession of the premises (being his eldest son) until the time of his removal to the said parish of *Garway*, the pauper having paid an acknowledgment of 2 s. 6 d. to the lord of the manor for the last thirty years ; but to his knowledge, his father never paid any acknowledgment : The premises were of the yearly value of 50 s. or thereabouts. The sessions confirmed the order of removal from *Arcop* to *Garway*, with costs. Both these orders were quashed without defence,

Residence upon a Person's own Property,

683. Case of the parishes of *Harrow* and *Edgware*, E. 11 Ann. Fol. 257. *A.* being settled at *Harrow* went into the parish of *Edgware*, and purchased a copyhold estate
for

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for life, and lived therein four or five years, and died : And as this was a tenement under ten pounds a-year, the question was upon the 13 & 14 *Ch. 2.* whether this gained him a settlement at *Edware* : It was argued that the statute had been always held to mean an estate which a man takes to farm, and not an estate of his own ; for if a person has a freehold he cannot be removed from it, though not worth ten pounds a-year. And by *Parker Ch. J.* and the court : Where a person has an estate for life, or an estate of inheritance of his own, that gains him a settlement, though less than ten pounds a-year ; for he cannot be removed ; and if he cannot be removed, he certainly gains a settlement.

684. *R. v. Wookey, M. 8 G. Str. 476.* A person settled at *H.* had an estate descended to him at *Wookey*, and was sent there by an order of removal. *Per Cur.* It is no settlement, nor inhabitation, though if he should go there, he could not be removed ; It might be a great injury to him, to be sent from *H.* where he might have a good trade, to *Wookey* to half an acre of land, may be, wherein perhaps he might have but a term. Order quashed.

A. being settled at B cannot be removed to C. where he has an estate come to him by descent.

685. *R. v. The Inhabitants of St. Nyotts, T. 13 G. 2. Burr. S. C. 132.* The pauper lived with his mother for some time at *St. Cleere*, on a tenement there, in part of which he had an estate of freehold and inheritance, and of which he was seized in common, together with his mother and sisters : He worked for about three years as a day-labourer, and lodged sometimes on his own estate, and sometimes in other places where he worked in the said parish of *St. Cleere*, and at other times in other parishes adjoining ; he believed that he did not reside forty days together at any one time, on his said estate in the said parish, before he sold the said estate. Lord Ch. J. *Lee* : A person cannot be sent to a place where he has a freehold, unless he has resided upon it forty days : This depends upon the statute 13 & 14 *Ch. 2.* which directs the pauper to be sent to the place where he was last legally settled for the space of forty days. I do not think it necessary, that the residence should be of forty days altogether. He was irremovable from *St. Cleer's* for forty days, and that is sufficient. The three other Judges agreed in opinion with his Lordship, that it is not necessary that the residence should be on the lands ; it is sufficient, that the residence be in the parish,

Not necessary, that the residence should be for forty days together.

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parish, and that a residence of forty days continued or uninterrupted is not necessary.

Forty days residence is necessary to support an order of removal.

686. *R. v. West-Shefford*, M. 25 G. 2. Burr. S. C. 307. *John Bird*, late husband to the pauper, was certificated from *Baydon* to *West-Shefford*, and during his residence there under the certificate, became beneficially intitled to a leasehold estate of fourteen pounds a-year, situate in *West-Shefford*, which had been granted by the trustees of the late Sir *W. B.* to the father of the said *J. B.* or his assigns, for ninety-nine years, determinable upon the deaths of the said father of the late *J. B.* the wife of his said father, and of *J. B.* himself. The said *J. B.* being the last surviving life, entered upon the estate on the 17th of *November* 1750, and resided thereon for twenty-eight days to the time of his death, which was on the 15th day of *December* 1750. Lord Ch. *J. Lee*: All the cases I can find agree in holding a forty days residence to be necessary to support an order of removal to a place. Mr. Justice *Denison*: I look upon this to have been settled since the case of *Mursley* and *Grandborough*, 1 Str. 97. Mr. *Burrow* observes, that a *MSS.* report of that case in his own possession, agrees exactly with the above representation of the opinion of the court in that case. In which it was holden by Lord Ch. *J. Pratt*, Mr. *J. Eyre* and Mr *J. Fortescue*, That any person who has an estate of freehold, copyhold or for years, by act of law (as by descent by marriage, as executor, administrator or purchase) may dwell upon it as his own, and is not removeable; and gains a settlement, if he continues forty days, though under ten pounds *per annum*; but he must abide forty days, in order to gain a settlement: And notice is not necessary, because he is not removeable from it: But Mr. *J. Powis* held *contra*, as to a term for years under ten pounds *per annum* value. Mr. *J. Foster*: I am of the same opinion. The case of *Weston Rivers*, in 2 Salk. 493. can be no authority to be sure. The month's abode in a parish relates to assessments which are made but once a month.

Interest of Executors and Administrators.

A. died intestate, possessed of a term for years. The pauper one of his sons entered and com-

687. *R. v. Widworthy*, T. 10 & 11 G. 2. Burr. S. C. 109. The pauper lived with his father and mother in a cottage in *Widworthy*, of the yearly value of thirty shillings, whereof his father had been many years possessed for the residue

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of a term of years, determinable upon lives; his mother died first, and then his father, (without a will) leaving the pauper and another son, (who is still living, and took his part and share of his father's estate, and effects in goods). The pauper, after the death of his father, entered and continued in possession, till the estate determined; after which time, and after the original order was made, he took out an administration to his father. Lord Ch. J. *Lee* was absent; Mr. Justice *Page* said, That at the time of making the original order of removal from *Widworthy* he had gained no settlement there, because nothing vested in him, before administration was granted him. Therefore that being a good order when made, the sessions ought not to have quashed it, though administration had been afterwards taken out. The sessions ought not upon a matter arising *ex post facto* to quash an order, good at the time of its being made. Mr. Justice *Probyn*: The possession of the pauper rested only upon a private agreement between him and his brother. If he had taken out an administration during the interest he had a vested right; but taking out administration after the term expired, could never give him an interest in the expired term, in which he had none during its subsistence. He was in possession merely as tenant at will: His right would have been without foundation, if administration had been granted to any body else. Mr. Justice *Chaple* observed, That there was no time during the continuance of the lease, in which the pauper was irremovable, and that without being forty days irremovable, a settlement could not be gained by him. It does not even appear, that the brothers made any agreement of partition between themselves. Order quashed.

688. *R. v. Inhabitants of Lower Swell, M. 31 G. 2. Burr. S. C. 436.* It was stated upon the sessions order, that the remainder of a term of two thousand years in a cottage at *Lower Swell*, had been in the year 1721 (before the statute of 9 G. 1. c. 7.) purchased by one *Ambrose Dunce*, for fifteen pounds ten shillings; which *Ambrose Dunce* afterwards died intestate on the 18th of October 1736, having lived therein till his death: That this *Ambrose Dunce* left a widow and five children, namely *John Dunce*, (the husband of the pauper *Hannab*, and father of the five pauper children), and one other son and three daughters. That after the death of the said *Ambrose Dunce*, his said widow continued and lived in the said cottage, from that time until the time of her death; which

which happened about two months after the death of her said husband : That after the death of the said *Ambrose Duncce's* widow, a sister of the said *Ambrose Duncce*, and his said three daughters entered on the said cottage, and lived therein for about three years afterwards ; and and then the said *John Duncce*, the son of the said *Ambrose* (and which said *John*, before and to that time, lived in the parish of *Turk Deane*,) entered on the said cottage ; and he and his said wife lived therein from that time until his death, which was seventeen years or thereabouts, and then the said *John Duncce* died intestate : Upon *John's* death, his widow *Hannah Duncce* the present pauper, and her said five children (who were all born in *Lower Swell*) continued and lived in it above forty days, without taking out any administration until they were removed by the present original order. After such removal she took out administration to her husband *John*. But no letters of administration to *Ambrose* were ever granted, either to the said *John*, or to the said *Hannah*, or to any one else : The three daughters of *Ambrose* are all now living. The sessions discharged the said original order of removal. Mr. *Vernon* alledged, no settlement was gained by *John Duncce*, or his widow *Hannah* in *Lower Swell*, for want of taking out administration : To prove this, he cited two cases, viz. *South Sidenham* and *Lamerton*, T. 3 G. 1. and *Widworthy* and *Farringdon*, T. 10 & 11 G. 2. The latter he said was directly in point. Mr. *Aston*, who shewed cause, observed, that the order of sessions runs thus, " which *John Duncce* before " he came to live in this cottage lived at *Turk Deane*," and this only in a parenthesis, so that it is not expressly stated, that he was settled at *Turk Deane* ; whereas in the case of *Widworthy* and *Farringdon*, it was expressly stated, that the pauper was settled at *Farringdon* and that consequently his derivative settlement from his father being gone, he ought to have taken out administration. But that in the present case, *John Duncce* does not appear to have had any other than the derivative settlement from his father, by possession of the cottage at *Lower Swell*, in which the pauper had lived himself seventeen years, which in three years more would have been a good title even under an ejectment. Mr. *Vernon* insisted, that the cases of *South Sidenham v. Lamerton* and *Widworthy v. Farringdon* prove, that the taking out administration is necessary. The two Justices have adjudged

judged the settlement of the pauper's to be in *Turk Deane*; and *Turk Deane* must be taken to be so on the whole of the case. The sessions give a bad reason for discharging the original order. The words are, "It is ordered by this court, that the said order be, and is hereby discharged; The case appearing to be, That, &c." Therefore the order of sessions is improper. Lord Mansfield: No: They do not give it as a reason, but state it as a fact: And upon the fact stated, it does not appear that *John Dunce* was settled at *Turk Deane*: On the contrary it appears, that he and all his family lived with *Ambrose Dunce* at *Lower Swell*, and gained a derivative settlement there under him. The other Judges concurring, The order of sessions was affirmed.

689. *R. v. Cold Ashton*, H. 31 G. 2. 2 Burr. S. C. 444. *Daniel Harrison* and *Mary* his wife, and *William Harrison* their son, lived in the parish of *Cold Ashton*, under a certificate from *Woodchester* for the year 1725, to the year 1728; at which time *W. F.* father of *Mary* the said wife of *D. H.* died intestate, leaving issue the said *Mary*, and five other children, and was at the time of his death possessed of, and intitled to a tenement, situate in *Cold Ashton*, for the remainder of a term of ninety-nine years, determinable upon the death of himself, and the said *Mary*, his daughter, who with her husband and son *William* aforesaid, then five years of age, took possession of the said tenement; and the said *D. H.* and the said *Mary* his wife, have occupied the same ever since until the present. There is a custom in the hundred in which the said parish lies, for the owners of small tenements to serve the office of tithingmen, for half a year only at a time; and the said *D. H.* served in that manner twenty-five years ago, and once since, about five years ago. No administration of the personal effects of the aforesaid *W. F.* was ever taken out by any person whatever. *W. H.* lived with his father and mother in the said tenement, till about eight or nine years ago, when he married and lived in the parish of *Cold Ashton* separate, and apart from the said *D. H.* and *Mary* his wife, until his (the said *W. H.*'s death) about one year and a half ago. His widow and children were by the sessions held to be settled at *Cold Ashton*. Lord Mansfield: There are two questions, First, whether *D. H.* the father gained a settlement in *Cold Ashton*; and Secondly, whether *W. H.* gained a derivative settlement there from his father. An estate of a man's own has been by construction

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struction, (and a very reasonable one two), holden to be within the certificate act. The true question is, whether *D. H.* had, or acquired such a right, in the estate as made him irremovable; and he had not merely a bare or negative right, but by twenty years possession, he had such a positive right as would have enabled him to have brought an ejectment. It is to be presumed after so long possession, that he had satisfied the other children of *W. F.* for their shares: The general question, whether the mere possession of a term, by the sole next of kin, without administration, be sufficient to render irremovable, there is no occasion to consider now; because I determine the present case upon this particular in it; otherwise I should desire to take time, and look into the cases. *W. H.* here gained a derivative settlement in *Cold Ashton* from his father. The children of all parents must have the settlement of the father till they have acquired one of their own; and there is no ground here to say, that the son must necessarily be taken to have left his father's house, before the time when the father obtained a complete settlement in *Cold Ashton* for himself. Mr. Justice *Denison* and Mr. Justice *Wilmot* concurring in opinion with his Lordship, The order was affirmed.



APPENDIX.

A P P E N D I X.

690. **A** Copy of the special orders and rule of court, in the case of *R. v. Ware*: At the *Epiphany* sessions for *Hertfordshire* in 1711 an order was made in these words: Whereas at the last general quarter sessions of the peace holden for this county, on *Monday*, in the first week after the feast of *St. Michael* the Archangel, viz. On the first day of *October* last past, before *Richard Helder*, *Richard Gouldstone*, Esquires, and others her Majesty's Justices of the Peace for this county, (amongst other things) it was ordered by this court in manner and form as follows, viz. Upon complaint made unto this court by *Thomas Pettitt* of *Ware*, within this county bargemaster, sole executor of *Susan Town* late of *Ware* aforesaid, widow, deceased, who was the late wife and sole executrix of *Thomas Town* late of *Ware* aforesaid, likewise deceased: That the said *Thomas Town* was in his lifetime legally nominated and appointed one of the overseers of the poor for the said parish of *Ware*: That he executed the office for one whole year: That in execution thereof, he the said *Thomas Town*, laid out, disbursed, expended, or was otherwise out of pocket, the sum of sixteen pounds, six shillings and tenpence, more than he ever had or received from the said parish: That the said sixteen pounds, six shillings and tenpence, was never paid or satisfied, either to the said *Thomas Town* or *Susan* his said late wife and executrix, in their respective lifetimes, or to the said *Thomas Pettitt* since their deaths, although the same hath often been made fully appear to be fairly and justly due, and the same allowed of, ordered and promised to be paid by the inhabitants of the said parish of *Ware*, at several vestries held for the said parish and otherwise: And that he the said *Thomas Pettitt* cannot get the said money of the parishioners of the said parish of *Ware*, although he hath often applied himself to them for it. Now, upon the prayer of the said *Thomas Pettitt*, for relief in the before-mentioned premises, this court doth therefore order, that the said *Thomas Pettitt*, and the churchwardens and overseers of the poor for the said parish of *Ware*, do forthwith, *Philip Boteler*, *Edmund Field*, and *William Berners*, Esquires, three of her Majesty's

Majesty's Justices of the Peace for this county, with all accounts, papers, and evidences relating to the said debt of sixteen pounds, six shillings and tenpence; which said Justices are hereby desired to hear all parties concerning the said debt, and to examine into and state the same, and to report the same in writing under this court at the next general quarter sessions of the peace to be holden for this county; at which time all the parties concerned are hereby ordered to attend, to the end, that this court may then make such further order relating to the premises as shall be thought fit. And whereas the said *William Berners*, *Philip Boteler*, and *Edmund Field*, Esquires, the three Justices of the Peace named in the said order, did now in pursuance of the same, deliver into this court their report in writing, under their hands writ on the said order, in manner and form following, viz. Pursuant to the above order, We the Justices in that behalf therein named have met, and all parties attending with their accounts and papers, and we having inspected the same, and examined several witnesses on oath in relation to the matters referred, do find that *Mr. Thomas Town* in the order named, and his partners, overseers of the poor of *Ware*, for the year one thousand six hundred ninety and seven, at a vestry held for that parish the 30th day of *May* 1698, had their accounts passed, allowed and signed, by the then minister and many other of the principal inhabitants of the said parish, That the balance of their said accounts was duly answered to the parish, save as to the sum of 4 l. 10 s. 1 d. which neither fully appeared to have been paid, nor did it appear that ever the parish objected to the non-payment thereof: That by mistake, *Mr. Town* having omitted in the said account, to charge 16 l. 16 s. 10 d. by him actually laid out in relation to his office, upon application to the parish, the same was examined into, and at three several subsequent vestries, the first held the ninth day of *November* 1698, acknowledged and certified to be justly due and allowed to be reimbursed; all which appeared under the hands of *Mr. Humphry Ives*, and many other of the principal inhabitants assembled at the said vestry: That allowing the parish the above sum of four pounds, ten shillings and one penny, we find twelve pounds, six shillings and ninepence still due and unpaid of the said sum of sixteen pounds, sixteen shillings and tenpence, which twelve pounds, six shillings and ninepence, we conceive, ought to be reimbursed by the parish. And we do

farther find, that Mr. *Thomas Pettitt*, in the said order named, is duly intituled to the sum of twelve pounds six shillings and ninepence, in such right as in the said order is in that behalf set forth, (the probates of the several wills in the order to that purpose mentioned, being produced before us at our said meeting); all which, in obedience to the said order, we do hereby certify and report. Dated at the *George Inn*. at *Ware* this sixth day of *November 1711. Anno regni Ann. Reg. decimo. Will. Berners, Philip Boteler, Edmund Field.* Now, upon reading the said report, and fully hearing all parties and all allegations, as well for the said *Thomas Pettitt*, as for the inhabitants of the said parish of *Ware*, this court is of opinion, that the said report so made unto this court by the said *William Berners, Philip Boteler, and Edmund Field* as aforesaid, is just and true, and this court doth allow thereof, and doth adjudge that there is now justly due and owing unto the said *Thomas Pettitt* as executor, and for the purposes aforesaid, the sum of twelve pounds, six shillings and ninepence, from the said parish of *Ware*: And doth therefore order, that the said Justices report be, and is hereby, confirmed: And this court doth further order, that the churchwardens and overseers of the poor of the said parish of *Ware*, or some, or one of them, do forthwith pay, or cause to be paid unto the said *Thomas Pettitt*, the sum of twelve pounds six shillings and ninepence, so due unto him from the said parish of *Ware* as aforesaid; and it shall be their warrant and discharge for so doing.

[The rule of the court of *K. B.* is, that the orders against the defendants be quashed for insufficiency.]

691. *R. v. Elers Cole. M. 12 G. 3.* Motion to discharge a man out of custody upon the following objections. 1st. The commitment doth not state to what place the man returned. 2d. Nor that he returned without a certificate. 3d. That it did not appear that he had been before convicted as a vagrant, which prior conviction alone under stat. of *Geo.* gives a power of commitment for a month. Mr. *Lucas* on the other side contended, that it had never been determined, that a prior conviction was necessary. 1 *Bur.* 595. 3 *Bur.* 1696. This commitment may be supported under stat. of 13 and 14 of *Car.* 2. if not under the 17 *G.* 2. And insisted, that it must be understood that he returned to the parish of the *Holy Trin.* because it was stated, that he was removed from thence.

Conviction of a man for returning after he had been removed quashed for want of stating to what parish he returned.

The commitment was as follows.

To—constables of Cambridge and to—keeper of—
These are to command you the said constables, in his Majesty's name, forthwith to convey and deliver into the custody of the keeper of the said workhouse the body of Eleere Cole for returning from the parish of St. Sepulchre's, after a legal warrant of removal from the parish of the Holy Trin. in the town aforesaid; and which warrant of removal was confirmed by the last general quarter sessions of the county of Cambridge; and you the said keeper are hereby required to receive the said Eleere Cole into your custody in the said workhouse, and keep him to hard labour for the space of one month. Lord Mansfield: This commitment cannot be supported; it does not say to what place he returned. Mr. J. Aston: It is totally uncertain. Mr. J. Willis of same opinion. The commitment must be quashed.

692. *R. v. Martin Rebowe, Esq. M. 12 G. 3.* King Char. granted by patent to Sir.—liberty to erect light-houses at Harwich; and toward the maintenance of them certain tolls and duties payable by all ships passing or coming into that harbour; in pursuance of which authority, two light-houses were erected, which Mr. Rebowe claims under this grant and subsequent letters patent. The duties he receives amount yearly to 1400*l.* but only part thereof is received at the port of Harwich, the rest at many different parts in the kingdom: That the collections are casual as ships pass by or come into the harbour, and there is no other advantage arising from the light-houses; the defendant occupies these light-houses, by two men, kept in his pay, to light and attend the fire and lamps, from sun set to sun rising, who take watch and watch, and have a bed, or beds, in the larger light-house, to lie on alternately; and in the day time clean the two houses, and carry in fuel. Mr. Rebowe does not reside in the parish, nor is otherwise an occupier there than as above. He is rated for the light-houses in the same proportion to the land tax as to the poor's rate; the sessions being of opinion that Mr. Rebowe ought to be rated and assessed towards the relief of the poor of St. Nicholas's parish, in respect of the said light-houses and duties collected and paid as aforesaid, made an order, confirming a rate in which the tolls were assessed and the above facts stated. Mr. Serjeant Glynn, in support of the order of sessions which confirmed the rate, by which the tolls or duties were assessed to the poor rate, contended, that they ought to be so rated because it is immaterial in what way the value of an estate or house arises; whether the profits

profits arise directly from the house or land, or from any collateral means: That the present are like the tolls of bridges, where they can be rated under the name of the house on the bridge only, as they are at *Fulham* at 500 *l.* per ann. and that the express clause, in an act of parliament, to make *Battersea* bridge extraparochial, strongly confirms this argument; for without that exception it should seem that the tolls of that bridge would be liable to parochial taxes: That the case in *Bunb.* 81. which will be relied on by the other side, where this property was determined not to be rateable to the church rate, is of no authority in the present case, because the opinion of one dissentient judge must greatly diminish the credit of the case, and because the first point was clearly determined against law. He insisted that this sort of property comes within the description of rateable property, and was so determined in the case of *Linwood* 1745. That although it was not rateable to the church, yet it may be so to the poors rate, by virtue of the act of 43 *Eliz.* which says, that lands and houses, and the occupiers of them, shall be rated. It might be said, that by this sort of occupation Mr. *Rebours* is an inhabitant; at least that he is so to some purposes, and to that of being liable to the poors rate; that the houses being rateable, they must be rated in proportion to their value and the profits they produce. Thus corporation tolls are rated, 3 *Keb.* 540. Stables, cellars and corn-mills, though not expressly named in the act of parliament, are constantly rated. Situations of houses are always considered as making a part of the value of the house: That it would be singular if this species of property is to be exempted, when every species of property is rated under the general words of the act. It would be unjust to exempt it, when it brings a burden to the parish, by giving a settlement to those who live in it. As to the objection of the uncertainty of the tolls, that would apply to all other tolls as well as to the present. As to the quantum of the rate, that was an objection at the sessions, but can't be made one before this court. Mr. *Wallace* e contra: They have taxed Mr. *Rebours* at 1400 *l.* per ann. does your Lordship believe that a yard of land in *Harwich* is worth 1400 *l.* the true question is, whether the duties are rateable? They are not within the act, nor can they be within the meaning of it. They are a branch of the prerogative of the crown, and so late as in the time of *Eliz.* there was not a single light-house in the hands of the subject. The tolls arise from all ships coming into or passing by the port of *Harwich*; they do not arise within the parish; the

tolls of bridges arise from persons going over the bridge and are collected in the parish. Were profits of a trade ever taxed? The tolls here are stated to be casual, and so they must be, and they are no more rateable than quit-rents and other profits which have been determined not to be rateable. The case in *Bunbury* has decided this question, for it came solemnly before the court on demurrer, and the tolls were held not liable to the church rate; and yet the words "for taxing to the church rate" are full as general as the words in the act respecting the poor's rate. As to the Serjeant's objection concerning the determination of the first point in that case, it is not material: but wherever the want of jurisdiction appears on the face of the proceedings, it is never too late to object to the want of jurisdiction. The resolutions in *Dalton*, the author himself, declares to be of little authority. Mr. *Mansfield*: These duties cannot be considered as arising from the land; Mr. *Rebours* undertakes to light these houses, and the crown grants him the profits; it is in nature of an office, which has been expressly determined not to be rateable in the *King v. Inhabitants of Shalfleet*. Tolls of bridges arise within a parish, these do not. Mr. *Reed*: The profits ought to arise within the parish; for it seems that by the words they should be local. A watch-house may as well be called a house within the act, and the watch duty be rated. The loose notes in *Comberback*, as to the tolls of markets being rated were exploded. In the *King* and *Vandewell*, tolls in a market are held not rateable. Mr. Serjeant, in reply: These tolls are not like the profit of a manor, for those may or may not arise within ten or twenty years. Lord *Mansfield*: They have, properly speaking, rated the fire and the profits arising from the house. The pantheon, play-house, and other places of publick amusement are rated, I suppose, but not for their profits. However we will consider of it, it seems at present that these duties are not rateable. Lord *Mansfield*: We took some time to consider the case of Mr. *Rebours* and are all of opinion, that he ought not to be rated for the tolls. This properly is not in the parish. They have not rated the house, they have rated the tolls. They are not locally situated in the parish, and therefore not rateable there.

According to the custom A hired himself at a statute fair, the day after old Michaelmas day until the next Michaelmas day

693 *The King and Inhabitants of Navestock*. Case states, that pauper at *Ongar* statute fair did, on the day next after *Old Michaelmes Day*, viz. on the 11 day of *October* 1760, let himself to *Samuel Pasford* of *Navestock* to serve until the *Michaelmas* following, old style, at the wages of 10 l. that pauper

pauper entered on said service and continued in it until the *Old Michaelmas Day* following; on which day he received his wages and quitted the said service: that it appeared to be according to the custom and usage of the country to hire a servant at statute fair, viz. the day after *Old Michaelmas Day*, in the manner in which this pauper was hired. Mr. *Mansfield* and Mr. *Lucas* contended it to be a hiring and service for a year: That the pauper was in the service on *Michaelmas Day*, received his wages, then quitted it: That the cases of customary hiring had of late been very strong: That upon hiring a house from *Michaelmas* to *Michaelmas*, the tenant should have the whole day for the payment of his rent: That, upon an order for time to plead till a day certain, the party has the whole of that day to plead in: That this was leap year, and the pauper served 366 days. Mr. *Wallace* and Mr. *Dodd* *e contra*: The court will never depart from the strict rule as to the hiring; till is a word of exclusion. It has been determined that a hiring on a *Saturday* after *Michaelmas Day*, which was on the *Thursday*, to *Michaelmas* day following, was no hiring; there was an omission of only two days, and here of one. The custom of the country will not help, as appears by the cases of *South Serney* and the *King* and *Newton*; for there must be no chasm in the hiring. The statute expressly requires a hiring for a year. The man might have refused to have done the family business on the *Michaelmas Day*. The being in the service on that day cannot explain the original contract. As to the *Witsuntide* case, there was a hiring for a year expressly stated; and it was there determined only that the custom of the country might operate on and affect the service, but not that it could controul the hiring. Lord *Mansfield*: There must be a hiring for a year. It has been determined that a hiring from a moveable feast to another feast is a sufficient hiring, being according to the custom of the country, although there should not be 365 days: on the other hand, a hiring two days after *Michaelmas* to the next *Michaelmas*, has been determined no good hiring; and therefore the question is, Whether here was a hiring for a year? Great criticism has been made on the word till; it may or may not be exclusive, according to the subject matter. How shall we construe it here? The custom is very material to explain it; the custom is to hire from the next day after *Michaelmas*. If this be wrong, there has been no settlement gained in this part of the country. How have the parties construed this hiring. It is certain they have con-

old style, was in the service and received his wages on that day and gained a settlement.

stated it *hiring for a year*. The servant did not want a place till the day after *Michaelmas*. His service did not end till then. The parties concluded it as a hiring, including *Michaelmas day*, for the pauper was actually in the service on *Michaelmas day*. Mr. J. Aston: It appears that the pauper entered on the day after *Michaelmas day*; "till," is the word relied on to prove it a hiring for less than a year. How has that word been understood? The pauper was in the service on the *Michaelmas day*, and took his wages; the service explains the hiring; here is in effect a hiring for a year, and a service agreeable to it. Mr. J. Willis: The custom of the country in such a doubtful case as this, must be called in aid. The rule was pronounced accordingly, being then determined by all the three judges to be a hiring for a year.

694. *The King and Inhabitants of East Isley*. Case stated that J. A. in June 1768, was hired at *Barrowbrook*, as a groom, for a year certain, to Lord Portmore, who had a seat at *Weybridge*, by Thomas Bell servant to said Lord Portmore, at 3*l.* 6*s.* *per ann.* to look after the said Earl's horses for the year, then standing at the said Thomas Bell's at *Barrowbrook*: That he lived the former part of the year at *Barrowbrook* and went from thence to the parish of *Marrow* in *Surrey*, where he staid the remainder of the year, within 20 weeks, and received his wages: That during all that year he was attending on the said Earl's running horses, and never once was at *Weybridge* during that year: That at the expiration of the said year, he was again hired at *Marrow* aforesaid, as a groom, for one year, by Jenkins, his Lordship's steward at 6*l.* 6*s.* *per ann.* still to look after his running horses: That he staid at *Marrow* some short time; from whence he went with his horses to *Weybridge*, where he staid about three months; from thence he went to *East Isley* with the said horses, where he staid about ten weeks: That he went with the said horses to *Epsom* races in *Surrey*, where he staid about ten days: That he then returned with the said horses to *Weybridge*, where he remained about three months; that he then went to *Marrow* with the horses, where he staid about twenty weeks; during which time his second year expired, where he received his last year's wages, and continued under the last hiring in the capacity of the groom, and to attend the Earl's running horses for another year, without any fresh contract, and then he went from *Marrow* to *East Isley* with the said horses, and continued with them at one Frogley's in the said parish of *East Isley*, for ten months, when

when said *Frogley* paid him his wages by the said Earl's orders, and thereupon he was discharged from the said Earl's service and he was never once at *Weybridge* during the last year: That pauper did not serve Lord *Portmore* for forty days at *Weybridge*, any one time: That *East Isley* is a place for training up running horses: That said Lord *Portmore* had not any house or estate there. It was contended that this was no service at *East Isley*; that it was like the *Scarborough* case, and merely casual: That the pauper was still moving from place to place, and never lived where the master's residence was. Lord *Mansfield*: It is the case of the huntsman mentioned in the *Scarborough* case, but is not like the *Scarborough* case itself; this is no more than the case of the *Oxford* stage-coachman. This is therefore a good service at *Isley*. Mr. *J. Aston* and *J. Willis* being of the same opinion, the rule was pronounced accordingly.

695. *The King* and *Edward Clowerly*, improperly intitled in the rule, *The King* and *Inhabitants of Botley*. On an appeal against an order to receive a parish apprentice, the sessions returned a special case in the following words: That it appears to them, on examination of witnesses and other evidence, that said *Edward Clowerly* resides in the parish of *Hound*, but is owner and occupier of an estate in the parish of *Botley*, at the yearly value of 30 *l.* upon which there is a house inhabited by a weekly labourer of the said *Edward* for the better managing the farm: That the said *Edward* did not reside or lodge in the said parish of *Botley*, but paid the church and poor rates for the premises: That a very considerable part of the lands of *Botley* is occupied by persons residing in other parishes. The sessions held the binding improper. Mr. Serjeant *Burland*, and Mr. *Grose*, in support of the order of sessions, contended first, that the justices at the sessions having a discretionary power to judge of the fitness or unfitness of binding apprentices to particular persons, and having by their determination declared, that *Clowerly* clearly ought to be relieved from the apprentice, and that the indenture ought to be cancelled, they had determined the question, and the court could not entertain any question of law about it, and cited *Minchamp's* case in *Salk.* 2. that if the question of law can be discussed they contended that the sessions had decided right, for parishes would get rid of the burden of their own poor, by apprenticing to persons living in other parishes, where they would gain a settlement: That although the 43 *Eliz.* says, that the churchwardens and overseers, with the consent of two justices may bind where they see

convenient, yet those words must admit of some restriction, or otherwise they might apprentice children living in *Hampshire* to persons in *Yorkshire*, or any remote part of the kingdom: That the jurisdiction of the parish officers is merely local: That these words "where they shall see convenient" must, mean "where they shall see convenient in their parishes." That these words in their utmost latitude would have given a right to put apprentices to the sea, service, which they could not do, or there would have been no necessity for an act of parliament to have empowered the binding out to the sea service: That they could not have rated the occupiers of lands if they had not been expressly mentioned, and that shews that the word "occupiers" being omitted in the parts of the act which respect apprentices, they cannot impose apprentices on them. Mr. *Mansfield* and Mr. *Kerby* on the other side contended, that the court ought to admit and hear the only question intended to be argued, because the case now before the court was drawn and settled by counsel before the cause came on at the sessions: That they had no other facts to go on than what were stated: That the only question there agitated and referred to this court was, Whether occupiers of land, not lying in the parish where the land is are bound by law to take apprentices, or rather, Whether they are excepted out of the poor laws to that purpose? That the sessions had not exercised their discretion as to the fitness of binding a man to *Clowery*: That they had not declared that it was unfit to bind an apprentice to him: That if they had indeed determined on the ground of unfitness there would have then been an end of any question: but not having so done, the question of law was open: That in *Minchamp's* case the sessions expressly stated that it was unfit to bind an apprentice to a merchant: That the fitness depends upon a variety of considerations, such as, whether others are not more fit. Whether the person to whom the apprentice is bound is a man of ability and has occasion for a servant or apprentice, which is totally a different question from the present, which is, Whether an occupier of land living out of the parish in which the lands are is not liable by law under some circumstances to have apprentices bound to him? That the sessions by their order have determined that such an occupier is not liable under any circumstances. Mr. *Grose* very candidly admitted that the only question argued at the sessions, and intended to be argued before the *King's Bench* was, whether such an occupier was

or

or was not liable, by law, independent of any consideration of fitness, arising from any particular circumstances? Upon which it was then moved that the case might be sent back to be re-stated, in order to state what was the particular ground of decision of the sessions; or else, that a rule might be granted for the parties to shew cause why they should not abide by their agreement, of arguing whether such an occupier was not liable to have an apprentice bound to him, and to consent to state on the record the question of law in such manner as to shut out the presumption arising from the sessions quashing the indenture, by which they were supposed to decide the man unfit from that last circumstance to be compelled to take the apprentice. But, by Lord *Mansfield*: There is no getting at the case; the sessions have said that it was unfit that this man should have an apprentice bound to him. On fitness, I think, they have determined. Here is no matter of law left to the court. Make an othercase. Bind another apprentice to him, and indict him if he refuses, and then the question may come on. Mr. *J. Aston*: Suppose a man to live in *London* having some land in the county, are the parish officers to bind an apprentice on him? Mr. *J. Willis* assenting. The rule for quashing the order of sessions was discharged, and sessions order confirmed.—*N. B.* The decision was the same on another case in which *James Clowerly* was the appellant at the sessions, in whose case there was no other difference from the former, but that there was no house upon the estate he occupied.

696. *R. v. Brungwyn. H. 13 G. 3.* The case states, that *Richard Hobby* the pauper was hired for a year in the parish of *Brungwyn*, and served it pursuant to such hiring, and received his wages: That about 1755 he married *Jane Davis*, who was then, and had been three years before, in possession of a house and garden in the parish of *Gladestry*, which had been given her by deed by one *Jane Williams*, the owner of the premises for upwards of thirty years before: That the said *Hobby* and his wife lived in the said house and premises for 17 years after their marriage, and never paid any rent, nor were interrupted in the enjoyment thereof by the lord of the manor, nor any other person whatsoever: That about *Ladyday* last, and sometime before *Hobby* applied to the officers of *Gladestry* for relief, who refused to relieve the paupers on account of their being owners of the said house and premises, which the parishioners of *Gladestry* pretended were built on the lord's waste, and insisted on their selling the premises, and that they should be removed to *Brungwyn*:

That

R. H. married J. D. who was possessed of a cottage, which had been conveyed to her by a person who had been 30 years in possession. After living there 17 years, they were held to have gained a settlement.

That about *Ladyday* last, the pauper and his wife sold the house to the parish officers of *Gladeſtry* for 7 guineas, and were then removed from the ſaid pariſh of *Gladeſtry* to *Brungwyn*, and on appeal from the order of removal, it was confirmed. Mr. *Baldwin*, who had been applied to by the pariſh of *Gladeſtry*, ſaid that the juſtice at the ſeſſions ſeemed to be of opinion that the word “purchase” under the ſtatute of *K. G.* meant purchase, in contradistinction to a deſcent; but upon looking into the caſes, he thought it meant and was confined to caſes where the conſideration was paid in money, and that he could not therefore ſupport the order. And it was accordingly quaſhed.

Affidavit was made by A. that the clerk of the peace did not ſtate his evidence in the ſpecial caſe. Motion was made for an amended order, but it appearing that the evidence was an intereſted perſon, the motion was reſuſed.

697. *R. v. Burgh. H. 13 G. 3.* Mr. Serjeant *Hill* moved that a ſeſſions caſe might be ſent down to be re-ſtated upon the affidavit of one *Jupholme* (who paid to the pariſh rates) and was examined at the time that the clerk of the peace was directed to ſtate the caſe according to the evidence, and that he had neglected to ſtate the evidence of the witneſs *Jupholme*; he admitted that he could not ſupport the order of ſeſſions as it was ſtated, and therefore objected to the manner of ſtating it. Mr. *Mansfield* who was on the other ſide, and Mr. *Hill*, both ſtated, that the juſtices began to doubt whether the certificate upon which the preſent ſettlemeut depended ſhould not have been ſigned by the churchwardens as well as overſeers, but they both agreed that that was unneceſſary, if the majority of officers ſigned. Mr. *Mansfield* objected that *Jupholme*’s affidavit was not to be received by the court becauſe he was intereſted by paying the pariſh rates, and the ſeſſions ought not to have admitted him as a witneſs; but Mr. Serjeant *Hill* inſiſted that he was made a competent witneſs, by being ſuffered to be examined; that the bare examining of a witneſs was a waving of any objection. Lord *Mansfield* being abſent, Mr. *J. Aſton* ſaid, we cannot admit an affidavit againſt the caſe as returned by the juſtices; beſides the propriety and truth of the caſe are only attacked by an intereſted perſon. It is immaterial when the evidence is objected to, if the objection appears during the trial. It was in the preſent caſe taken during the trial. Mr. *J. Willis* and *Aſhurſt* of the ſame opinion. The rule for ſending the caſe to the ſeſſions to be re-ſtated was diſcharged, and the rule for quaſhing the order of ſeſſions made abſolute.

A, was born a baſtard but ſoon after his birth

698. *R. v. Toſtock. H. 13 G. 3.* Caſe ſtates, that *Edward Parkinson*, otherwiſe *Jermin*, was born at *Toſtock* of the body

body of *Elizabeth Parkinson* spinster, an inhabitant of the parish of *Toslock*, and that *Edward Jerman*, an inhabitant of the parish of *Iselam*, but then residing in *Toslock*, was the putative father of said *Edward Parkinson*, otherwise *Jerman*, and that soon after the birth of said *Edward Perkinham*, otherwise *Jerman*, *Elizabeth Parkinson* at the parish of *Toslock*, was married to said *Edward Jerman*: That some short time after the said marriage, the parish officers of *Toslock*, desired the said *Edward Jerman* to get a certificate from *Iselam*, whereupon *Edward Jerman* applied to the parish officers of *Iselam* for such a certificate for himself and his wife; and the said *Edward Parkinson*, otherwise *Jerman*, the pauper, his son, without informing them, that the said *Edward Perkinham*, otherwise *Jerman* was born a bastard, and that the parish officers knew nothing thereof but from such information of said *Edward Jerman*: That *Iselam* granted a certificate in 1746, acknowledging *Edward Jerman*, *Elizabeth* his wife, and *Edward* the pauper by the name of *Edward* their son, to be their parishioners. Mr. *Mansfield* contended in support of the order of sessions, that the certificate was improperly obtained upon the suppression of a fact which ought to have been communicated to them, at the time the certificate was asked for; which was, that the son was born a bastard at *Toslock*, of which they were not apprised when they gave a certificate owning him to be their parishioner: That there never was a case, where the certificate was held to be conclusive, where it was obtained by fraud at the suppression of facts; but where they have granted them by mistake, for against mistake they might have been guarded. This was the case of *White Waltham*, and several others. This is a fraud, on the face of the order, and the justices need not state fraud. Mr. *J. Aston*: Did the pauper desire the father to get a certificate for her son, as well as himself? Answer, That does not appear. Lord *Mansfield*: This is the case of the *King and Hedcorn. Burr.* 253. Unless you can shew, that the pauper desiring a certificate as to the son, and that the pauper receiving the certificate, colluded with the master, though the justices should not have found fraud, yet if the pauper to whom the certificate was granted, had desired the son to be included in it, the court would have understood it to be fraud. If, Mr. *Mansfield*, you can maintain your ground, and prove a fraud, to be sure you will be right. Mr. *J. Willis* and *Ashurst* concurring, the rule was made absolute, and the sessions order quashed. *N. B.* The words printed in *Italian*, are those of

his father and mother were married, when the parish where the child was born desired the father to procure a certificate, which he did, for himself, his wife and child, and no fraud appearing, the certificate was held conclusive.

A. married at the time of his being a soldier, when, being examined agreeable to the mutiny act he deposed, that he had gone apprentice to B. and lived with him five years. His wife deposed before the sessions that she had heard him speak to the same purpose. This deposition of A. and evidence of his wife were held to be sufficient evidence to prove an apprenticeship.

of the order, though they seem to imply a contradiction.

699. *R. v. Inhabitants of St. Michael, Bath. H. 13 G. 3.* Two Justices removed *Mary Taylor* and her infant child from the parish of *St. Paul* in *Bedford*, to *St. Michael* in *Bath*. The sessions confirmed the order, and state the following case. That it appears by the oath of *Mary Taylor*, one of the paupers, that she was married about 4 years ago at *Bedford* to one *Richard Taylor*, then a corporal of foot: That he stayed there with her only about 3 quarters of a year, and then left her: That she has heard her husband declare, that he was born about 26 years ago at *Charlton*, near *Malmesbury* in *Wilts*; that when he was 14 years of age, he served an apprenticeship to one *Morley*, whose Christian name was *Thomas*, as she believed, who lived in *St. Michaels* parish in the city of *Bath*, and served the said *Thomas Morley* about 4 years: That he then ran away and listed for a soldier; went to *Ireland*; came from thence to *Bedford*, and married her in *St. Paul's* church at *Bedford*: That she does not know what is become of her said husband, having never seen nor heard of him since: That it appeared that the examination of said *Richard Taylor* was taken in writing shortly after his said marriage, before two Justices of *Bedford*, agreeable to the mutiny act; which writing was produced, and is in these words: *Town of Bedford, to wit.* The examination of *Richard Taylor* on this act saith, that he was born in the parish of *Charlton* in the county of *Wilts*, there he resided about six years, from thence went to school to *Malmesbury* in said county above 4 years, from thence returned home to his mother, until about the age of 14 years, from whence he went apprentice to *James Morley* as a plasterer at *St. Michaels* in *Bath*, with whom he lived 5 years and a half, after which he enlisted into the 63d regiment where he now remains. Taken before us the 12th October 1768. It farther appeared by the evidence of *Robert Morley*, that there is not at present a person of the name of *James Morley* a plasterer in *St. Michael's, Bath*; but that one *James Morley* a plasterer in *St. Michael's, Bath*, died there about eight years ago: That said *Robert* worked with said *James* as a journeyman, until his death, but sometimes was absent three quarters of a year together: That he was perfectly acquainted with said *James Morley*, and has often heard him say, that he never would take an apprentice, for he was a single man, and only a lodger himself; and said *Robert* says, to the best of his knowledge, that said

James Morley never had an apprentice in his life: That *John Morley* brother of said *James*, who is a plasterer, never had an apprentice, to the best of his knowledge, and has divers times given, in the hearing of said *Robert*, for reason, that being all his life a single man and a lodger, he never would take an apprentice: That there appeared no evidence that the said *Richard Taylor* had been bound an apprentice other than is contained in his aforesaid examination and declaration given in evidence by his wife; neither did it appear, that said *Richard Taylor* had gained any settlement in said parish of *St. Michael's* other than as aforesaid. *Mr. Wallace*, *Mr. Mansfield*, and *Mr. Whitechurch*, against the order of sessions contended, that there was no evidence that the pauper's husband's was ever bound an apprentice, and the acts of parliament expressly require a binding; and so have many determinations, as in the cases of *Whitechurch Canonorum*, *St. Hellen's*, and some others: That no inference can be drawn from the party's having declared that he was an apprentice; for it was incumbent upon those who were to support the order of removal on the ground of an apprenticeship to prove, that the indentures once existed, and that it was not incumbent on those who litigated the apprenticeship, to prove the negative: That the mutiny act means, that the soldiers should give such evidence only as ought to be admitted at the sessions: That the soldiers own evidence would not have been a proof of a binding: That the wife's evidence of her husband's declaration would not be admissible: That there is no room to imply a binding, because that they have stated, that no other evidence was given of the binding. *Mr. Barecroft* on the other side: It is incumbent on the other side, to lay such a ground before the court, as may induce them to quash the order of sessions. Now it is stated, that he was an apprentice; now that could not be, unless he was bound. No other evidence could he had on our part; the husband is run away; the master is dead. *Lord Mansfield*: Here the party for quashing the sessions order apply to do so, because the justices have drawn a wrong conclusion from the evidence. I do think not they have drawn a wrong conclusion. The presumption from a man's serving 4 years as an apprentice is that he was bound. *Mr. J. Aston*: In the case of *St. Hellen's*, it was found, that there was no indenture, and it did not appear that any inquiry was made after an indenture; therefore the court had no ground to presume a binding. Here the man is run away, and he swore that
he

I am not

he was an apprentice, the question is, whether the court will imply that there was an indenture? There is a very reasonable presumption of a binding, and every thing is to be presumed in favour of a settlement. Mr. J. Willis: We are not to presume that the apprenticeship was by parol; the presumption is the contrary way. In the *King and Mewland*, which was alluded to, it was stated to be an apprenticeship by parol, for quashing the order, Mr. J. Ashurst of same opinion. Rule discharged.

700. R. v. *Ashton Keynes*. H. 13 G. 3. The special order states, That on hearing the appeal of the inhabitants of the parish of *South Cerney*, in the county of *Gloucester*, against an order under the hands and seals of *Thomas Bush*, and *Ferdinando Askew*, Esquires, two of his majesty's Justices of the peace of and for the said county of *Wilt*s, (one being of the quorum) bearing date the second day of *July* last past, for the removal of *William Messenger* miller, and *Martha* his wife, and *William* aged eight years, *Mary* aged six years, *John* aged four years, and *Anne* aged about two and twenty weeks, (their children), from the parish of *Ashton Keynes*, in the said county of *Wilt*s, to the said parish of *South Cerney*. And on hearing counsel on both sides, it appearing to this court, that on *January* one thousand seven hundred and thirty-nine, *Richard Messenger* the father of the pauper, *William Messenger* together with *Mary* his wife, and *Richard Messenger* his son, went from the the said parish of *South Cerney* to the parish of *Ashton Keynes*, and lived there, under the following instrument or paper writing, as a certificate.

Gloucester II. To the churchwardens and overseers of the poor of the parish of *Ashton Keynes*, in the county of *Wilt*s: We the churchwardens and overseers of the poor of the parish of *South Cerney*, in the county of *Gloucester*, do hereby own and acknowledge *Richard Messenger* and *Mary Messenger* his wife, their child *Richard Messenger* his son, aged half a year, and all heirs of her body, begotten by the said *Richard Messenger*, to be inhabitants legally settled in our said parish of *South Cerney* in the county of *Gloucester*, and to be parishioners there. In witness whereof, we the said churchwardens

dens and overseers of the poor of the parish of *South Cerney*, have hereunto respectively set our hands and seals, the twenty-eighth day of *January 1739-40.*

Attested by

<i>Anthony Brown</i> □	}	Churchwardens.
his mark.		
<i>Paul Jenkinson</i>	}	Overseers.
<i>William Haskins.</i> ⊙		
<i>Henry Cook.</i> ⊙		
<i>John Harris.</i> ⊙		

We whose names are hereunto subscribed, two of his majesty's Justices of the peace for the said county of *Gloucester*, do hereby certify, that the said *Paul Jenkinson* came before us this day, and made oath, that he was present with the other witnesses above mentioned, and did see the said churchwardens and overseers severally sign and seal the said certificate, and that his name is of his own proper handwriting. And we do allow all the certificate above written. Given under our hands the 28th day of *January, 1739.* *Robert Sandford.* *Jos. Small.*

And it further appearing, that the said *Richard Messenger*, the father, never gained any settlement in the parish of *Ashton Keynes*, and that the pauper *William Messenger* was born in the said parish of *Ashton Keynes*, but had never done any act to gain any legal settlement; and it appearing to this court, by the paper writing, that the name or mark of *Anthony Brown*, one of the witnesses attesting the execution of the same, was not proved before the Justices, allowing the same to be of his own proper handwriting. This court is therefore of opinion, that the said paper writing is not a proper certificate: and doth adjudge that the said order of removal be quashed. *Mr. Wallace* and *Mr. Wilson* shewed cause. By *Stat. 3 G. 2.* The certificate must be attested and allowed by two Justices; and one of the assenting witnesses is to prove that the subscription of both witnesses was of their own handwriting, as in the case of a will. Here the witness before the Justice, only proves the subscription of one of the witnesses: therefore it is no certificate within the stat. and the objection is not destroyed by saying, that one of the witnesses is a marksman. The end of the legislature, in making the statute of *Geo. 2.* appears from the preamble to prevent disputes, and to make the proof of certificate more effectual, and substitute the modes

modes therein described, in the place of all others inquired by former acts. It must have all the requisites of a certificate, or it is no certificate at all. For this purpose they cited the: case of *Wootton St. Laurence, Hil. 8 G. 2.* Lord *Mansfield*: The stat. G. 2. allows a less strict mode of proof; this certificate has been confided in near thirty years; and now the parish objects, that the proof was in fact stronger than the law requires. Mr. J. *Aston*: The witness swears, that he was present with the other witnesses. Mr. J. *Willis* and *Asburst* concur; and the rule for quashing the order was made absolute, without hearing counsel on the other side.

Pauper was bound apprentice by the parish of A. to a labourer living in the parish of B. with his consent. The pauper is afterwards verbally assigned to different masters, and the binding and assessments were held sufficient.

701. *R. v. Inhabitants of St. Margaret, Lincoln, H. 13 G. 3.* The case states, that the pauper was, by indenture duly executed, and dated *May* the first, 1767, (the said pauper being at that time a poor child of the parish of *St. Martin's*, and then of the age of 14 years), bound apprentice by the major part of the churchwardens and overseers of the poor of the parish of *St. Martin*, with the consent of *John Hoelen* and *John Brown*, two Justices for the said city, (one whereof was of the quorum) to *Mark Johnson* of the parish of *St. Mary*, described in the indenture to be a labourer, to learn the art and mystery of his business, and to serve till the age of 21 years, or day of marriage: That said pauper resided with her said master till *October* 1769, when the said *Johnson* entered into an agreement with *Mosley* of *St. Peter's* (to which agreement the parish officers of *St. Martin* were neither parties nor privy) for assigning the said apprentice to the said *Mosley*, which assignment was indorsed on the back of the indenture, and the indenture was delivered to *Mosley* the master, who received the pauper into his service, and she continued therein for six months; when *Mosley* agreed with *Masters* to lend the pauper to him: That *Masters* accordingly ordered her into his house in the parish of *St. Mary*, where she served him for a year and a half, with *Mosley's* consent; and then *Masters* being discontented with her behaviour, ordered her out of doors, on which she returned and offered herself again to *Mosley* as his apprentice: That *Mosley* refused to receive her into his house, and having the indenture then in his possession, he gave it up to her; whereupon, being destitute of all other support, she went to her father in the parish of *St. Mary*: That after she had been with her father about

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about six months in the said parish of *St. Mary*, and before the indenture expired, by two years, the churchwardens and overseers of said parish, carried her before two Justices of *Lincoln*, who moved her to *St. Martin's* parish in *Lincoln* to her first master, and *Mosley*, having each of them refused to receive her into his service. Mr. Serjeant *Hill*. In support of the order of sessions, I understand, there are three objections made to this order. 1st. That the original binding was not good, because the officers of one parish had bound her to a person of another parish. As to the identity of the parish, I do not find that it ever has been determined, altho' it may have been litigated; the two Justices who are to assent to the binding have a discretionary power, and are a check on the parish officers, in the present case they have assented. If it was originally bad it was not void, but only voidable, and therefore there is no objection to her settlement, where she served 40 days. 2d. That the assignment being without the concurrence of the parish officers, who were parties to the original indenture. As to this objection. Altho' as an assignment it may not be good; yet it is good as a contract or agreement between the parties, for the consent of the assignee has been ruled to be the consent of the first master; and there is no consent necessary from the first master, the assignee having consented. The *K. and inhabitants of Clapham*, 2 *Burr.* 266. and the *K. and St. Petro*, 248. 3d. Objection. That the indenture being still in force, she the apprentice ought not to have been removed from *St. Mary's* where her master resided; I answer that she did not come into *St. Mary's* under the indenture, she came there to her father, because she had no where else to go to.

Qu. Mr. *J. Astton*. Was the pauper of that parish to which the officers who bound her out belonged?

Ans. Yes.

Mr. *Willes* on the other side. The officers are to bind out where they see convenient and fit; but those words must be restrained to their own parish, for they cannot be supposed to know who are fit to take apprentices, unless they live then in their own parishes. If they had a power to extend, or go beyond their own parish, why was it necessary to authorise the binding to the said service, by *stat. of Q. Anne*. The indenture is still subsisting, the master is still living, and resided in

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St. Mary's all this time of the apprentice's removal from thence ; and therefore she ought not to have been removed from him, and ought now to be sent to him. Thus *Burn* under title removal off apprentice, says, that Justices cannot on complaint of the overseers remove the apprentice from the master. But I have another objection, which is, that she was bound to a day labourer, which is an improper person to take an apprentice. *Dalton*, cap. 58. If a man is not able to keep servants, he cannot retain them, *a fortiori*, he cannot retain an apprentice. And in *Lord Coke* 8th part, fol. 5. no man who does not use a trade, can take an apprentice. Mr. J. *Ashton* enquired, whether it was a practice to bind apprentices to other parishes, and was informed by some gentleman of the bar, that it was. He observed, that by the 9th § in 5 *Eliz.* magistrates and officers seem confined to particular districts. We can't find any fraud, to be sure, the binding to a labourer looks very suspicious. If the binding is good, the service for 40 days either with the consent of the master or apprentice is good ; nay, parole assignment has been held sufficient. There is nothing in the case if the binding is good ; to be sure, persons are not compellable to take apprentices from other parishes. The going back to the place in which the master lives, to whom she was originally bound, is nothing to the purpose : she did not go under this indenture, she went there because she had no where else to go to. Mr. J. *Willes*. It would be hard and inconsistent to narrow the words where the Justices shall see convenient. It seems to me to be very convenient to bind apprentices to other parishes ; for in parishes where the poor are very numerous, it would be almost impossible to find fit persons to take them in the parishes where they live. The 9th sect. only confines persons to act within particular districts : to be sure, persons are not compellable to take apprentices from other parishes. Mr. J. *Asbursft.* It seems to me, that the words are so very general, that they may bind out of the parishes : the residence in this case with her father is nothing. Lord *Mansfield* referred to Mr. *Lee*, for the practice, who did not directly state how that is ; but argued, that the present mode of assigning into the three said parishes, is full as inconvenient, as to give the overseers an original power to bind into said parishes. Lord *Mansfield*. To be sure the observation upon the power of assigning is exceedingly strong ; the inconveniency would
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not be remedied by narrowing the powers given by the act ; because the master may assign into the third parish immediately. It is then the best to agree with the Justices. The session order was unanimously confirmed.

N. B. It has been very lately determined ; upon an hearing before the court of *Exchequer*, that if a poor person meets with an accident which requires the assistance of a surgeon, the parish officers are obliged to pay the surgeon, although they did not direct him to attend the poor person.

F I N I S.

APPENDIX

not be rendered by narrowing the passage given by
the wall, because the water may turn into the street
and cause damage. It is the duty of the owner to
keep the passage open and free from obstruction.
If the owner does not do this, he is liable to a
fine before the court of the city. A poor person
needs with an almsman which the almsman of a
house, the poor person is obliged to pay the house
rent, the poor person is not bound to attend the poor
house.



